

Nebraska Law Review

Volume 92 | Issue 2

Article 4

2013

When Socrates Meets Confucius: Teaching Creative and Critical Thinking Across Cultures Through Multilevel Socratic Method

Erin Ryan

Lewis & Clark Law School, eryan@law.fsu.edu

Xin Shuai

Ocean University of China

Yuan Ye

Ocean University of China

You Ran

Ocean University of China

Li Haomei

Ocean University of China

Follow this and additional works at: <https://digitalcommons.unl.edu/nlr>

Recommended Citation

Erin Ryan, Xin Shuai, Yuan Ye, You Ran, and Li Haomei, *When Socrates Meets Confucius: Teaching Creative and Critical Thinking Across Cultures Through Multilevel Socratic Method*, 92 Neb. L. Rev. (2014)

Available at: <https://digitalcommons.unl.edu/nlr/vol92/iss2/4>

This Article is brought to you for free and open access by the Law, College of at DigitalCommons@University of Nebraska - Lincoln. It has been accepted for inclusion in Nebraska Law Review by an authorized administrator of DigitalCommons@University of Nebraska - Lincoln.

When Socrates Meets Confucius: Teaching Creative and Critical Thinking Across Cultures Through Multilevel Socratic Method

TABLE OF CONTENTS

I. Introduction	290
II. Where East Leaves West: Cultural Differences Between U.S. and Chinese Legal Education	294
A. The Predominant American Model	294
B. The Predominant Chinese Model	303
III. The Case Study	313
A. Host University	313
B. Courses	314
C. Language Issues	314
D. Methodology	315
E. Instructor's Evaluation	320
F. Student Surveys	322
G. Multilevel Socratic East and West	325
IV. Student Evaluation of Their Experiences with the Method	328
A. Case-based Teaching vs. Theory-based Teaching ...	329
B. Developing Critical-Thinking Skills vs. Learning the "One and Only Answer"	331

© Copyright held by the NEBRASKA LAW REVIEW

* Erin Ryan, Associate Professor, Lewis & Clark Law School; J.D., Harvard Law School; M.A., Wesleyan University; B.A., Harvard University. Xin Shuai, Visiting Researcher, University of California–Berkeley; Ph.D. candidate, Ocean University of China. Yuan Ye, J.D. candidate, University of Arizona; LL.B. candidate, Ocean University of China. You Ran, Lecturer, China Petroleum University; Ph.D. candidate, Ocean University of China. Li Haomei, M.A. candidate, Ocean University of China. Lewis & Clark J.D. candidates Laura Shoaps and Kimberly White LaDuca provided invaluable research assistance. We are grateful to Ocean University of China, the Chinese Ministry of Education, and the U.S.–China Fulbright program for the support that made this project possible. Ryan is additionally grateful to the dean, faculty, and students of Ocean University Law School for inviting her to be part of their educational community for the 2011–12 academic year.

- C. Guided Discovery vs. Passive Reception 333
- D. The Value of Preparation Before Class 335
- E. Focus on Reasoning Process vs. Results 335
- F. Evaluation: Reasoning vs. Memorization 336
- G. The Importance of Law Teachers’ Exposure to
Practical Legal Experience 337
- V. Reports from the Field on Adapting the Method in
Chinese-Led Classes 338
 - A. Xin Shuai’s Law Classes for Non-Law Majors 338
 - 1. Asking Questions Instead of Offering the Correct
Answer 339
 - 2. Encouraging the Students to Defend
Themselves 340
 - 3. Results 341
 - B. You Ran’s Experience Teaching Law Majors 341
 - 1. Lesson Preparation Is Both the Teacher’s and
Students’ Responsibility 342
 - 2. The Advantages and Disadvantages of Small
Group Discussions 342
 - 3. The Challenges and Rewards of Implementing
Socratic Teaching 343
 - 4. Designing Proper Questions for Socratic
Dialogue 344
 - 5. Students’ Proposals to Integrate Socratic
Teaching and Exam Preparation 344
- VI. Recommendations for the Future 345
 - A. In the East 345
 - B. In the West 347
 - C. Overall 348

I. INTRODUCTION

This Article presents a case study of adapting the Socratic method to teach critical-thinking skills underemphasized in Chinese universities and group competency skills underemphasized at U.S. institutions. As we propose it here, Multilevel Socratic teaching integrates various levels of individual, small group, and full-class critical inquiry, offering distinct pedagogical benefits in Eastern and Western cultural contexts where they separately fall short. After exploring foundational cultural differences underlying the two educational approaches, this Article reviews the goals, methods, successes, and challenges we encountered in the development of an adapted “Multilevel Socratic” method, concluding with recommendations for further application in both contexts. It is co-authored by an American law professor and four Chinese university students: an undergraduate, a master’s de-

gree candidate, a doctoral candidate, and an experienced lecturer in law pursuing advanced graduate studies.

The Socratic method, popularized in American law schools, emphasizes the presentation of problems for discussion rather than material for memorization.¹ In the United States, law professors typically engage in Socratic dialogue with a series of individual students in the presence of a large class, inviting each student to individually consider questions that probe the rationales, implications, and alternatives of various ideas.² A Socratic teacher engages her students in strategic intellectual debate, forcing them to challenge the reasoning behind her purported conclusions, theirs, and the conclusions of other students. Ideally, the method facilitates an interactive classroom in which lively discussions stimulate engagement, participation, and epiphany.³ Yet cultural norms in Chinese and other Eastern societies occasionally clash with the classroom roles required by the method, which compromises its effectiveness at engaging student participation and stimulating learning.⁴ Such norms discourage students from challenging the teacher, engaging in apparent confrontation with other students, taking public risks, volunteering, or even calling attention to themselves or their own ideas.⁵

In tailoring the method for use in our Chinese law classes, our most significant modification was to adapt Socratic dialogue for use with peer-learning groups rather than focusing exclusively on individuals in series. Together with other participatory learning exercises, we balanced opportunities for students to brainstorm in partnerships and to think independently through problems posed by the instructor in the traditional Socratic style. We learned to rotate frequently between these approaches, often beginning with a round of small group dialogue (in which students explore the merits of a question in groups of three to five), then reconvening the full class to enable groups to compare their findings, and then shifting to more individualized dia-

-
1. See, e.g., Christie A. Linskens Christie, *What Critiques Have Been Made of the Socratic Method in Legal Education? The Socratic Method in Legal Education: Uses, Abuses and Beyond*, 12 EUR. J. L. REFORM 340, 342 (2010); David D. Garner, *Socratic Misogyny?—Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597, 1603–05 (2000). For a review of recent literature about Socratic teaching more generally, see James R. Beattie Jr., *Socratic Ignorance: Once More Into the Cave*, 105 W. VA. L. REV. 471 (2003); Linskens Christie, *supra*; Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113 (1999); Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991); Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249, 252 (1997).
 2. See, e.g., Linskens Christie, *supra* note 1, at 342.
 3. See, e.g., Kerr, *supra* note 1, at 117.
 4. We discuss these cultural differences *infra*, Part II.
 5. *Infra*, sections III.D and IV.B.

logue in which the teacher poses follow-up questions to specific students. We learned to shift frequently among different levels of inquiry, as determined by the unique direction of each discussion. We came to refer to our adaptation as the “Multilevel Socratic Method.” Following the Chinese case study reported in this Article, the American and Chinese co-authors have continued to develop the model in both Chinese and American classrooms.

Multilevel Socratic dialogue maintains traditional Socratic strengths of inculcating creative- and critical-thinking skills but re-engineers classroom dynamics to engage wider student participation and a wider range of legal skills. It harnesses the tools of “peer instruction” that are increasingly lauded as a superior alternative to traditional lecturing.⁶ The method provides a safe forum for student experimentation before ideas are shared with the large group, facilitating the experience of students reluctant to be singled out for cultural or other reasons. Of additional benefit to Eastern students, it reduces the risks of direct personal confrontation while still enabling the vigorous exchange of ideas missing in more traditional, lecture-oriented classrooms.

Of benefit to both Eastern and Western students, Multilevel Socratic teaching ensures that every student participates actively in the reasoning process, rather than the select few that are called on directly in any given class using the traditional method. Interspersing discussion among small and large groups can improve the experience of students potentially marginalized by race, gender, or ideology in any dominant culture. Of particular benefit to American students, it also provides opportunities for students to build teamwork, collaborative creativity, and other group competency skills under-emphasized in American education. The additional layer of peer-accountability can also motivate more disciplined student performance in any cultural context.

What follows is the firsthand account of our cross-cultural voyage into the development of Multilevel Socratic teaching in China, yielding enhancements that can benefit students and teachers from all cultural groups. The American law professor, teaching in China for the year through the Fulbright Program, encountered great hunger among her Chinese students for participatory learning that more directly engaged them in their own educational experience. She also found that their creative- and critical-thinking skills were underdeveloped, in light of an educational culture that emphasizes recitation over analysis. The Socratic method was helpful for inviting students to focus more on the interesting questions raised by study material

6. See, e.g., Emily Hanford, *Physicists Seek to Lose the Lecture As a Teaching Tool*, NAT'L PUB. RADIO (Jan. 1, 2012), <http://www.npr.org/2012/01/01/144550920/physicists-seek-to-lose-the-lecture-as-teaching-tool>.

than the (often illusory) “right answer”—but the individual focus of traditional Socratic teaching caused cultural friction. Together, we developed a variety of techniques to encourage class participants toward a more inquisitive, reflective posture without offending local norms, culminating in the Multilevel Socratic Method. It took time for students to adapt to the new approach, but in the end, most made remarkable progress. Following the Chinese case study reported here, co-authors have continued to develop the model successfully in both Chinese and American classrooms.

In this Article, we share our experiences from our multiple perspectives as American and Chinese teachers and Chinese students at the undergraduate, graduate, and doctoral levels. None of us claim special expertise in pedagogical research beyond that which we have maintained as committed teachers and learners. However, and in the spirit of answering prior calls for “thick description” from the field,⁷ we hope that the case study we offer will be a valuable addition to the overall discourse—especially that exploring the complex intersections between teaching, learning, and culture.

Indeed, as most prior scholarship about Socratic teaching focuses on American legal education, cultural discussions have almost exclusively focused on the experience of racial, ethnic, and gender minorities in American classrooms.⁸ Here, we present a rare exploration of the cultural dimensions of Socratic teaching outside the Western context. Our experience suggests that using the Socratic method beyond the United States can yield similar pedagogical benefits but requires modifications to honor different cultural norms. The modifications we developed also reveal possibilities for more effective use of the method in American higher education. Integrating various levels of group and individual Socratic dialogue can help overcome cultural barriers, reduce the potential for negative impacts on marginalized students, and target specifically underdeveloped skillsets in both Eastern and Western classrooms.

Part II provides context for the case study, describing the differences between traditional American and Chinese law teaching styles and techniques. Our analysis draws on the personal experiences of the authors, the existing literature about different Chinese and American pedagogical approaches, and an emerging literature on the comparative strengths in each system.

7. See, e.g., Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 *FORDHAM L. REV.* 787, 794 (2000) (citing CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* (1973); CLIFFORD GEERTZ, *LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETATIVE ANTHROPOLOGY* (1983)) (“‘Thick descriptions,’ as such, give us more factors to take into account, more facts, more information, more emotional and sociological, as well as rule-based inputs to consider . . .”).

8. See, e.g., Beattie, *supra* note 1, at 489–92 (2003).

Part III presents the case study, beginning with the objectives and experience of the experiment from the perspective of the American law professor. She contrasts the methods that she used in the Chinese classroom with the methods she had used previously in the United States, analyzing what worked well and what did not in the new context. She then describes and evaluates the incremental development of Multilevel Socratic Method, concluding with student perspectives reported in anonymous surveys. In Part IV, the student authors describe the case study from their own perspective, contrasting their experience in the case study with their experiences in more traditionally structured Chinese classes.

In Part V, the two Chinese doctoral candidates offer their unique perspective as both students in the case study and law teachers themselves, describing their own efforts to introduce the Multilevel Socratic Method in their own law classes in China. Part VI concludes the Article with specific recommendations for implementing Multilevel Socratic teaching in Chinese classrooms more generally and for improving American Socratic teaching, as well.

II. WHERE EAST LEAVES WEST: CULTURAL DIFFERENCES BETWEEN U.S. AND CHINESE LEGAL EDUCATION

To set the stage for the case study, this Part reviews the significant cultural differences that underlie the predominant educational styles used in American and Chinese legal education. The following discussion contrasts traditional U.S. and Chinese pedagogical methods in law teaching specifically, and to some degree, higher education more generally. It begins with a description of the origins and mechanics of the Socratic method as typically deployed in American law schools.

A. The Predominant American Model

The United States is a common law country, in which constitutional principles, legislative statutes, and administrative regulations are supplemented by judicial precedents articulated in formal judicial decisions, or cases.⁹ Despite two hundred years of robust legal history, formal legal education became widespread in the United States relatively recently. From the colonial period through the Civil War (roughly, 1607–1865), the vast majority of American lawyers learned their profession through independent study and apprenticeship.¹⁰ Although American legal education began as early as 1779 at the College of William & Mary and 1817 at Harvard Law School, most states did not require formal legal training to enter the profession until the

9. *E.g.*, 15A AM. JUR. 2D *Common Law* §§ 1–15 (2012).

10. ALBERT J. HARNO, *LEGAL EDUCATION IN THE UNITED STATES* 19–20 (1953).

turn of the twentieth century.¹¹ Today, there are just over 200 accredited law schools in the United States, graduating an average of 40,000 graduate law students each year.¹²

In 1870, Harvard Law professor Christopher Langdell revolutionized legal education by popularizing what became known as the “case method” of law teaching. The case method engaged students in discussion of judicial opinions and other original legal authorities in order to derive for themselves the relevant principles of law.¹³ Also known as the “Socratic method” for its intellectual debt to Socrates, the Greek philosopher who taught by raising questions rather than answering them, Langdell’s method quickly became the predominant model of law teaching in the United States.¹⁴

Today, American law teaching regularly features Socratic dialogue, in which a professor leads a group of students through a guided exploration of legal cases, doctrine, and theory by asking a series of questions that requires the students to actively participate in reasoning their own way through.¹⁵ Through strategic dialogue, students are trained to identify the operative legal issues and governing rules in a given fact pattern, apply rules to the given facts, and defend their conclusions in the face of countervailing claims.¹⁶ They are encouraged to consider the conflicting considerations that would guide legal decision-making in the opposite direction and to articulate all available lines of argument. A good professor encourages students to debate one another on points for which there are no clear answers in order to tease out the competing underlying values.¹⁷ She also encourages students to argue with her own propositions.¹⁸

11. *Id.* at 23, 37, 86–87. See also OXFORD UNIV., THE OXFORD COMPANION TO AMERICAN LAW 382–83 (Kermit L. Hall ed., 2002) (discussing the development of the American Bar Association and the shift towards formal legal training).

12. Section of Legal Educ. & Admissions to the Bar, Am. Bar. Ass’n, *ABA-Approved Law Schools*, AM. B. ASS’N, http://www.americanbar.org/groups/legal_education/resources.html (for Law School statistics: select the “ABA-Approved Law Schools” tab; for law students statistics: select the “Statistics” tab, then select “Class of 2012 Law Graduate Data”) (last visited June 30, 2013) (listing 202 ABA-approved law schools and 43,979 total graduates).

13. *E.g.*, Weaver, *supra* note 1, at 518, 526–28.

14. *Id.* at 594.

15. *E.g.*, Beattie, *supra* note 1, at 479. The professor teaches students to internalize the Socratic dialectic, the “essence of legal reasoning and the prize of the [method].” *Id.* (quoting Phillip E. Areeda, *The Socratic Method (SM) (Lecture at Puget Sound 1/31/90)*, 109 HARV. L. REV. 911, 992 (1996)).

16. This method of legal analysis is commonly known as “IRAC,” which stands for “issue-rule-application-conclusion.” *E.g.*, CHRISTINE COUGHLIN, JOAN MALMUD ROCKLIN & SANDY PATRICK, A LAWYER WRITES: A PRACTICAL GUIDE TO LEGAL ANALYSIS 82 (2008).

17. *Cf.* Kerr, *supra* note 1, at 123–24 (describing variations on the traditional Socratic method in encouraging student discussion).

18. *E.g.*, Beattie, *supra* note 1, at 482–83.

Most American law professors will explain that their objective is not only to introduce students to the foundational doctrine in core legal subject matter areas, but also to teach them “how to think like a lawyer.”¹⁹ For most law professors, this means training their students to engage in independent critical reasoning and creative analysis.²⁰ The case method uses legal disputes, judicial decisions, and legislative policy as the raw material of analysis, but the same pedagogical approach could easily apply to other fields of inquiry that merge factual analysis with problem-solving—requiring the synthesis of conflicting and even orthogonal decision-making elements—such as education, public administration, political science, management, or even medicine.²¹ The ultimate objective is to train thinkers to analyze a problem by identifying the relevant information and sequentially testing different theories of resolution.²²

Thus, in a typical American law school class, the professor may begin by asking a student to “state the case,” or explain the relevant facts in a given legal dispute that will become the focus of their collective analysis.²³ The facts may be from a case reported in an official judicial decision or from a “problem” created by the professor specifically for the purpose of the lesson. Once the facts are established, the professor might ask that student (or another student) to explain the conflicting claims at issue or what the parties hope to accomplish through adjudication. Then she might ask that student (or another student) to make the best legal argument for these different positions. Or she might ask that student (or a different student) what they think is the best resolution of the problem and why. She might ask another student to comment on the first student’s proposal. Or she might ask how the court reached its conclusion and why. She may ask the students to critique the court’s reasoning or propose alternative reasoning. She may ask why the legal doctrine developed in the direction that it did, prompting the court’s decision. She may ask what the world would look like had the doctrine developed differently. She might ask the students to draft an alternative approach.

The method teaches critical thinking because students are trained to dig for problems in superficially satisfying answers.²⁴ (For example, if the assertion is “*this is the right answer because it is the tradi-*

19. E.g., Peter T. Wendel, *Using Property to Teach Students How to “Think Like A Lawyer:” Whetting Their Appetites and Aptitudes*, 46 ST. LOUIS U. L.J. 733, 733 (2002).

20. E.g., Weaver, *supra* note 1, at 575; Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 519 (2007).

21. Cf. Linskens Christie, *supra* note 1, at 350–53.

22. E.g., Beattie, *supra* note 1, at 479.

23. E.g., Weaver, *supra* note 1, at 576 n.172.

24. E.g., Beattie, *supra* note 1, at 478–79.

tional approach,” the student learns to ask “*why is tradition the best basis for making this decision?*”) Students are taught to “unpack” the assumptions underlying superficial answers to tease out problems of logic, proof, or bias.²⁵ (*What constitutes a tradition? Is this really the traditional approach? Traditional for whom?*) They are taught to identify the trade-offs required by decision-making in the face of conflicting or multi-criterion value judgments.²⁶ (*Why is the traditional approach better than the economically efficient approach? Why is it better than the fairest approach? The environmentally sustainable approach?*) They are taught never to be satisfied by “conclusory” or tautological assertions, which masks the values trade-offs in circular reasoning.²⁷ (*The doctrine mandates this approach because that is what the law requires.*)

Ideally, the method not only teaches students how to expose poor reasoning, it also prepares them to assemble robust alternatives.²⁸ In this respect, the method teaches not only the reductive side of critical thinking, but also the creative side by encouraging students to draw connections between elements without immediately obvious relationships. Students are asked to continually experiment, applying new theories to old problems and old theories to new problems. They must learn to identify synergy between the remote elements of one problem and the resolution of another by analogizing to prior cases, related disciplines, and underlying theories. For example, when cities began bringing common law nuisance cases against subprime mortgage lenders for creating public nuisances by destroying neighborhoods through avoidable foreclosures,²⁹ and when states brought similar suits against coal-fired power plants for contributing to climate change,³⁰ these efforts—successful or otherwise—were acts of creativity.

In the American law school model, students engage in this training by taking relatively few courses at a time—on average, about four per semester. Nevertheless, they are required to engage in substantial outside preparation for their courses. Students spend at least one or two hours reading pre-assigned materials for every hour that they spend in class. After class, they spend a substantial amount of time digesting material covered during class into their notes, often organizing their notes into a full-length “outline” of the course. In many

25. *Id.*

26. *Cf.* Linskens Christie, *supra* note 1, at 346 (noting the Socratic method requires students to learn to assess multiple viewpoints about an issue).

27. *Cf.* Beattie, *supra* note 1, at 479 (noting the Socratic method requires students to “vary perspectives”).

28. *See supra* notes 21–22.

29. *E.g.*, *City of Cleveland v. Ameriquest Mortg. Sec., Inc.*, 615 F.3d 496, 498–99, 506 (6th Cir. 2010).

30. *E.g.*, *Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527, 2532 (2011).

courses, students are also asked to perform regular writing assignments, participate in skills exercises or clinical programs, or research and write legal briefs or academic papers.

At American law schools, many smaller classes take the form of discussion seminars or skills workshops, and some especially large courses may rely more heavily on traditional lecturing. However, Socratic teaching can be used in classes of any size. For example, Harvard government professor Michael Sandel regularly Socratically teaches a world-famous political philosophy course (*Justice*) to about one thousand students at a time.³¹ *Justice* is one of the most popular courses at Harvard University, and as one made freely available over the Internet to rapt students around the globe, it is perhaps the most celebrated example of Socratic teaching in the modern world.³²

Most American law professors use variations of Socratic dialogue and the case method because of their substantial advantages in cultivating skills central to lawyering.³³ Compared with the passive-reception lecture (in which students passively receive knowledge from a professor's oral presentation), the Socratic method provides superior tools for teaching critical thinking, reasoned analysis, oral presentation, performance under pressure, and disciplined multi-factor analysis.³⁴ The method emphasizes the derivation of underlying legal theory through the application of legal doctrine in actual cases and controversies, exploring tension among conflicting legal values.³⁵

At its best, the interactive learning process maintains student engagement at a variety of pedagogical levels. The professor directs the dialogue through multiple students at different points throughout a lesson, but when the professor asks a question of one student, the rest are simultaneously spurred to think through their own answers to that question. Students, never knowing when they will actually be

31. See Nikita Makarchev, *Sandel Wins Enrollment Battle*, HARV. CRIMSON (Sept. 26, 2007), <http://www.thecrimson.com/article/2007/9/26/sandel-wins-enrollment-battle-justice-triumphs/>; Colleen Walsh, *A Class Open to the World*, HARV. GAZETTE (Dec. 3, 2012), <http://news.harvard.edu/gazette/story/2012/12/a-class-open-to-the-world/>; see also HARV. UNIVERSITY'S JUST. WITH MICHAEL SANDEL, <http://www.justiceharvard.org/> (last visited July 13, 2013) (providing access to online lectures, comments, and other information about Michael Sandel's justice course and book).

32. *Id.*

33. *E.g.*, Beattie, *supra* note 1, at 484–85.

34. *Id.* (“The current practice of law, for better or worse, often entails publicly addressing on and responding to difficult questions where the speaker's reasoning must withstand close scrutiny Our students must be able to address the problems presented, analyze applicable legal doctrine, evaluate the underlying concerns and commitments of those affected, effectively respond to the questions asked, and ask the right questions in turn, all the while thinking on their feet. Socratic teaching uniquely prepares students for such important legal tasks.”).

35. *Id.* at 484.

asked to speak their answer aloud, are encouraged to formulate internal answers to the professor's questions as though they have been asked personally. Indeed, in the most traditional version of the Socratic dialogue, nobody knows who will be called on next, although some teachers provide various forms of notice.³⁶ In addition, professors often encourage students to interrupt the dialogue by volunteering their own independent questions.³⁷ As one Chinese student-author observed about the method in our classes, "every class creates a group brainstorming process" by which the students work together to understand the relationship between the case, doctrine, and theory.

Despite these pedagogical strengths, traditional Socratic teaching can also suffer from serious weaknesses. The method has been widely critiqued for its negative effects on students when professors implement it sloppily, incorrectly, insensitively, or self-interestedly.³⁸ Students can be brutally intimidated by the experience of being put on the spot to perform difficult legal analysis in front of a large audience, and by a professor falsely made to seem omniscient by the method itself.³⁹ Critics of the method are especially troubled by the potential for its misuse to disproportionately marginalize female and minority students.⁴⁰

Moreover, while scholars generally praise the method for fostering critical thinking skills, it is certainly not the ideal method for teaching every part of the curriculum. Some material may be more successfully conveyed by lecture—for example, history, technical rules (such as the tax code or future interests), or other essentially arbitrary constructs

36. Although Socratic teachers traditionally "cold-call" on students at random, some soften the method by providing various forms of notice (calling alphabetically, by seating, or on members of a pre-assigned answer "panel").

37. Cf. Weaver, *supra* note 1, at 586.

38. E.g., Beattie, *supra* note 1, at 483–92 (discussing problems of student humiliation, the inefficiency of professors' "hiding the ball," the potential to create combative students, and the silencing of women and minorities); Garner, *supra* note 1, at 1609–11, 1627–29 (discussing problems of student boredom, classroom inefficiency, gender discrepancies in participation, and professor conduct); Linskens Christie, *supra* note 1, at 347–50 (reviewing scholarship critical of the method).

39. E.g., Kerr, *supra* note 1, at 118–19 (noting that the method can be psychologically harmful to students and manipulated to advocate the professor's personal agenda); Susan M. Williams, *Putting Case-Based Instruction Into Context: Examples from Legal and Medical Education*, 2 J. LEARNING SCI. 367, 387 (1992) (noting frequent student complaints about the method's "perceived tendency to demean or degrade students").

40. E.g., Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37, 38 (1997) (reporting on overwhelmingly negative studies of Socratic teaching, concluding that the method "alienates, oppresses, traumatizes and silences women"); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 46 (1994) (describing the silencing effect of the Socratic method on women); Beattie, *supra* note 1, at 483–92 (discussing impacts on both women and minorities).

that would be impossible or grossly inefficient to “derive” through inquiry and discovery.⁴¹

Exclusive use of the Socratic method can also create practical problems in the classroom, and it focuses on some skills to the exclusion of other equally important skills. In any given class, especially large classes, most students are unlikely to participate directly.⁴² Traditional Socratic discussions are mostly conducted individually, with one student at a time, rather than encouraging the group problem-solving skills that will be critical for later legal practice and real-world challenges.⁴³ The method has also been critiqued for failing to develop the writing skills that are critical to lawyering success and for generally emphasizing doctrinal learning over practical skills.⁴⁴ Some argue that the traditional closed-book issue-spotting exam associated with the method can encourage students to invest in building an overly narrow skill set.⁴⁵ Depending on how it is used, the method can also create hierarchical barriers separating the professor from the students in a way that can stifle potentially useful class discussion.⁴⁶

In response to these concerns, American legal academics are increasingly focused on various kinds of pedagogical reform, especially following the release of the critical Carnegie report on legal education in 2007.⁴⁷ Reform efforts include proposals for increased curricular focus on teamwork skills⁴⁸ and the cultivation of more supportive Socratic dialogue that appropriately supports students’ exploration of

41. *E.g.*, Garner, *supra* note 1, at 1610–11 (discussing the inefficiency of using the method to convey large amounts of information); Williams, *supra* note 39, at 387 (noting student complaints about the “sense of confusion, aimlessness and inconclusiveness” the method can leave them with).

42. *E.g.*, Katherine S. Mangan, *Harvard Law School Takes Steps to Cut Class Size and Improve Its Image*, CHRON. HIGHER EDUC. (Feb. 4, 2000), <http://chronicle.com/article/Harvard-Law-School-Takes-Steps/28203/>.

43. *Cf.* James R. P. Ogloff et al., *More Than “Learning to Think Like a Lawyer:” The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 180 (2000) (noting the Socratic method jeopardizes interpersonal relationships among students); Kerr, *supra* note 1, at 119–20 (elucidating the critique the Socratic method teaches only case-based legal reasoning to the exclusion of other skills important for the practice of law).

44. *See, e.g.*, Beattie, *supra* note 1, at 493–94. *But see* Jeffrey D. Jackson, *Socrates and Langdell in Legal Writing: Is the Socratic Method a Proper Tool for Legal Writing Courses?*, 43 CAL. W. L. REV. 267, 269 (2007).

45. *E.g.*, Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 528 (2007); Weaver, *supra* note 1, at 577–78.

46. *E.g.*, Garner, *supra* note 1, at 1597; Guinier, *supra* note 40, at 46.

47. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

48. *See* Janet Weinstein et al., *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36, 39–46 (2013), available at <http://www.swlaw.edu:8080/site01/pdfs/jle/jle631weinstein.pdf> (explaining that teamwork concepts are pivotal to professional success but infrequently taught in law school and describing efforts by law

material rather than intimidating them.⁴⁹ Many institutions have committed to smaller class sizes to encourage more frequent and less intimidating classroom participation by each student.⁵⁰ Institutions and instructors are attempting to better integrate doctrinal learning and practical skills, including the integration of skills-based exercises in traditionally doctrinal first-year courses.⁵¹ Other institutions have experimented with better ways of varying methodology, matching course assessment to desired skills, and providing guidance on developing legal writing skills.⁵² An ongoing dialogue has emerged about how best to adapt legal education to the changing market for legal services.⁵³

American universities more generally are also exploring ways to improve the learning experience of their students, and especially, to improve upon the passive reception entrenched in the traditional lecture model.⁵⁴ For example, at a recent Harvard University conference dedicated to teaching and learning, educators discussed emerging research in cognitive psychology and neuroscience that provides insight into the disjuncture between university teaching methods that continue to emphasize traditional lecturing and the ways that people actually learn.⁵⁵ Harvard physics professor Eric Mazur, a respected proponent of peer-instruction methodology,⁵⁶ was especially critical of the passive-reception lecture method of transferring information, which he argues fails even this limited task.⁵⁷ According to Mazur, students who learn by lecture are never “prodd[ed] . . . to make meaning from what they learn” and never “confronted with their own mis-

and graduate schools to better incorporate teamwork training into the curriculum).

49. See Beattie, *supra* note 1, at 478.

50. For example, after decades of first-year sections with upwards of 150 students, Harvard Law School retooled its first-year curriculum in 2000 to cut class sizes in half, with sections of about 80 students. *1L Sections*, HARV. L. SCH., <http://www.law.harvard.edu/current/1l-sections/index.html> (last modified Apr. 5, 2013).

51. *E.g.*, Jackson, *supra* note 44, at 268–69.

52. *Id.*; Kerr, *supra* note 1, at 124 (discussing the integration of Socratic dialogue with alternative pedagogies, such as dividing classes into “activity chunks” and focusing each on a different skill, method, or activity).

53. *E.g.*, Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 598 (2010). See also BRIAN Z. TAMANAH, *FAILING LAW SCHOOLS* (2012) (arguing that law schools are to provide the educational and economic value because of high tuition and a poor legal market).

54. *E.g.*, Dan Berrett, *Harvard Conference Seeks to Jolt University Teaching*, CHRON. HIGHER EDUC. (Feb. 5, 2012), <https://chronicle.com/article/Harvard-Seeks-to-Jolt/130683/>.

55. *Id.*

56. See *infra* notes 150–53, discussing Mazur’s peer instruction methods in detail.

57. Berrett, *supra* note 54.

conceptions.”⁵⁸ Failing at one of the highest goals of higher education in general, these students never learn “to extract knowledge . . . and apply it in a new context” (and to add insult to injury, they quickly forget what information they did absorb after the test anyway).⁵⁹ Across the nation, American educators are similarly engaged in reform efforts to better emphasize problem-solving skills in K–12 education.⁶⁰

It is noteworthy that the traditional Socratic method, for all its woes, succeeds at exactly those points where traditional methods most fail. Nevertheless, teachers who use the Socratic method are rightly experimenting with ways of improving on its various shortcomings. Indeed, recent literature reviews many useful departures from the traditional method, emphasizing its benefits in conjunction with other pedagogies (including interspersed lecturing) to create a more rounded legal skillset.⁶¹

In summary, there remains ample room for improvement in American legal education, and further reform is doubtlessly needed. Nevertheless, our case study attests to the value of several core aspects of the predominant approach—especially the importance of participatory learning through guided Socratic dialogue.⁶² Traditional Socratic teaching can suffer from weaknesses that legal educators are rightly seeking to address. Yet reforms should be built around this successful method for teaching critical and creative analysis—skills that are not only key to adjudication and governance but to the mechanisms of civil society in general.⁶³

58. *Id.*

59. *Id.*

60. See, e.g., Emma Brown, *Poll: Most Americans Unfamiliar with New Common Core Teaching Standards*, WASH. POST, Aug. 20, 2013, available at http://www.washingtonpost.com/local/education/poll-most-americans-unfamiliar-with-new-common-core-teaching-standards/2013/08/20/ffacc0d6-09b9-11e3-8974-f97ab3b3c677_story.html?wpisrc=nl_cuzheads (explaining the 45-state Common Core curriculum reform plan and observing that “[t]he new rigorous standards emphasize critical thinking and problem solving and are meant to better prepare students for success”). For more information about the Common Core reform plans, see, e.g., *English Language Arts Standards*, COMMON CORE STATE STANDARDS INITIATIVE, <http://www.corestandards.org/ELA-Literacy> (last visited Sept. 10, 2013).

61. See *supra* sources cited notes, 1, 51–52.

62. Cf. Paul Gewirtz & Jeffrey Prescott, *Point of Order—Why Legal Education Matters*, CAIXIN ONLINE (June 1, 2010), <http://english.caixin.com/2010-06-01/100149077.html> (discussing the development of the legal profession and legal education in China and how it could benefit from American legal education’s focus on critical thinking); Lawrence E. Mitchell, *Law School Is Worth the Money*, N.Y. TIMES (Nov. 28, 2012), <http://www.nytimes.com/2012/11/29/opinion/law-school-is-worth-the-money.html?ref=contributors&r=0> (arguing that legal education teaches more than law and that “the career for which [law schools] educate students, done through the medium of the law, is a career in leadership and creative problem solving”).

63. Cf. Gewirtz & Prescott, *supra* note 62.

B. The Predominant Chinese Model

With more than three thousand years of recorded history, “modern” Chinese legal education began late in the Qing dynasty, which lasted from 1644 to 1911.⁶⁴ Legal education expanded between 1912 and 1948, during the era of the Republic of China, but entered a difficult period after the establishment of the People’s Republic in 1949.⁶⁵ During the Cultural Revolution of 1966–1976, legal education was largely dismantled, leading to a lost generation without any formal legal training.⁶⁶ Following the Deng Xiaoping reforms of the 1970s and ‘80s, legal education began to flourish in China once again,⁶⁷ and there are now more than 600 schools teaching law at the undergraduate level, the graduate level, or both.⁶⁸ In 2009, the China Academy of Social Science reported that 220,000 undergraduate students were studying law, 60,000 students were studying law at the master’s level, and another 8500 at the doctoral level.⁶⁹

China is a civil law country in which the rules of law set forth in constitutional and statutory codes⁷⁰ are supplemented by governance goals set forth in the “Five Year Plans” and other management plans that are periodically drafted by the central government.⁷¹ Students primarily learn the law through the study of the statutes and their theoretical premises.⁷² Because judicial precedent does not play an important role in China’s civil law system, cases are not widely used in instruction. In contrast to the American model, traditional Chinese legal education emphasizes lecture-based learning with few opportu-

64. Roderick O’Brien, *Legal Education in China: English Language Materials*, 38 INT’L. J. LEGAL INFO. 93, 93, (2010).

65. *Id.*

66. Timothy A. Gelatt & Frederick E. Snyder, *Legal Education in China: Training for a New Era*, 1 CHINA L. REP. 41, 44 (1981).

67. *Id.* at 43.

68. *E.g.*, Beijing Evening News Agency (北京晚报), *Quantity of Law School and Department Increases More than 100 Times in the Past 30 Years* (法学院系数30年增100多倍 毕业生就业率最低), SINA (新浪教育) (Mar. 9, 2009), <http://edu.sina.com.cn/gaokao/2009-03-09/1503191266.shtml>.

69. *Id.* See also Ji Weidong, *Legal Education in China: A Great Leap Forward of Professionalism*, 39 KOBE U. L. REV. 1, 3 (2005) (studying the university level and higher legal education in the People’s Republic of China and how legal education has grown by leaps and bounds in the past twenty-five years).

70. *Cf.* Albert H.Y. Chen, *Toward a Legal Enlightenment: Discussion in Contemporary China on the Rule of Law*, in MANSFIELD DIALOGUES IN ASIA 13 (1999).

71. *Cf.* Dan Guttman & Yaqin Song, *Making Central-Local Relations Work: Comparing American and China Environmental Governance Systems*, 1 FRONTIERS ENVTL. SCI. & ENGINEERING CHINA 418, 422–23 (2007).

72. Shiwen Zhou, *The Reform Strategy of Legal Education in China*, 22 PAC. MC-GEORGE GLOBAL BUS. & DEV. L.J. 69, 69 (2009); Judith A. McMorrow, *Professional Responsibility in an Uncertain Profession: Legal Ethics in China*, 43 AKRON L. REV. 1081, 1087 (2010) (discussing the focus on civil law rules in a system without judicial common law).

nities for student participation.⁷³ In contrast to the American focus on critical inquiry, the Chinese model focuses on the “conservation and reproduction of knowledge.”⁷⁴ Teaching methods have been shaped by both Confucianism and educational theory borrowed from the former Soviet Union in the early days of the new People’s Republic.⁷⁵

After the 1949 revolution, the central government adopted the work of Soviet education theorist I.A. Kairov as an authoritative model for national education policy.⁷⁶ They drew directly from his book, *Pedagogics*, in establishing the contours of teaching practice and educational management throughout the country.⁷⁷ Consistent with *Pedagogics*, the primary responsibility of primary, secondary, and higher education teachers in China is to convey knowledge, skill, and techniques to students through lecturing.⁷⁸ Educational goals are strictly defined by formal plans, textbooks, and curricula that teachers may not be able to choose for themselves.⁷⁹ Teachers and students are given wider latitude at the university level, but many elements of Kairov’s pedagogy persist in higher education. Lecturing remains the primary teaching method, the authoritative status of teachers is upheld, and students’ primary responsibility is to memorize the material they receive from teachers.⁸⁰

Still, the widespread adoption of Kairov’s pedagogy was greatly facilitated by long Chinese cultural traditions. As our student authors explain in Part IV, traditional Chinese teaching follows the general

-
73. See McMorrow, *supra* note 72, at 1086–87 (“As a result, the Chinese legal education is dominated by lectures, taught by professors with little or no legal experience, and offers quite limited clinical and skills education.”); Weifang He, *China’s Legal Profession: The Nascence and Growing Pains of a Professionalized Legal Class*, 19 COLUM. J. ASIAN L. 138, 147 (2005); Ji Weidong, *supra* note 69, at 12.
 74. Joseph Kee-Kuok Wong, *Are the Learning Styles of Asian International Students Culturally or Contextually Based?* 4 INT’L. EDUC. J. 154, 156 (2004).
 75. E.g., JOHN W. HEAD, CHINA’S LEGAL SOUL: THE MODERN CHINESE LEGAL IDENTITY IN HISTORICAL CONTEXT (2009) (discussing the impact of Confucianism throughout China’s history); GLEN PETERSON, RUTH HAYHOE & YONGLING LU, EDUCATION, CULTURE, AND IDENTITY IN TWENTIETH CENTURY CHINA 173 (2001).
 76. PETERSON ET AL., *supra* note 75, at 173; Huang Shuguang (黄书光), *The Theory Radiation and Practical Influence of I.A. Kairov’s Pedagogy in China* (凯洛夫《教育学》在中国的理论与实践影响), FUDAN EDUC. FORUM 42 (Vol. 8 No. 3, 2010).
 77. PETERSON ET AL., *supra* note 75, at 173; Shuguang, *supra* note 75.
 78. E.g., Ji Weidong, *supra* note 69, at 12.
 79. Wang Yanling (王艳玲), *Kairov’s Pedagogy from the Perspective of the Professional Development of Teachers* (从教师专业发展的视角审视凯洛夫教育学), GLOBAL EDUCATION 7 (Vol. 38 No. 8, 2009).
 80. Sam Blay, Angus Young & Grace Li, *Adventures in Pedagogy: The Trials and Tribulations of Teaching Common Law in China*, 15 LEGAL EDUC. REV. 137, 153 (2005).

presumption that “teachers are wiser than students.”⁸¹ It is presumed not only that teachers possess more knowledge than their students, but also that they possess greater wisdom to interpret it. Students are assumed to be naïve, so their opinions are not given much weight. For this reason, consulting students’ opinions in class is not considered an important part of teaching.

Presumptions in Chinese education about the superior wisdom of teachers have a long intellectual history, beginning with the traditions of Confucianism.⁸² Confucius was an ancient Chinese philosopher who lived circa 500 B.C. and whose teachings form the basis of many aspects of traditional Chinese culture.⁸³ Confucianism is responsible for some of the most admirable features of China’s educational culture—for example, the tremendous importance with which most Chinese people regard education.⁸⁴ Chinese communities invest whatever they can in the education of the next generation.⁸⁵ Children receive the message from a young age that their education is precious and that their primary obligation as children is to excel in their schoolwork to the best of their ability.⁸⁶ Parents and grandparents

81. *E.g.*, Ting Wang, *Understand Chinese Culture and Learning*, in PROCEEDINGS OF 2006 AUSTRALIAN ASSOCIATION FOR RESEARCH IN EDUCATION CONFERENCE 148 (2007).

82. Chen, *supra* note 70.

83. *E.g.*, HEAD, *supra* note 75, at 9, 13 (explaining that Confucian teachings are premised on the idea that people can be educated by virtue and that they learn from the example of a virtuous king).

84. *E.g.*, Haidong Wang, *Teaching Asian Students Online: What Matters and Why?*, 15 PAACE JOURNAL OF LIFE LONG LEARNING 69, 74 (2006), available at <http://www.iup.edu/assets/0/347/349/4951/4977/10269/DB45A8B2-0966-463F-B80C-A45528E759BA.pdf>. (“Teachers were traditionally listed among the five categories of those most respected by Chinese society: the God of Heaven, the God of the Earth, the emperor, parents and teachers.”); Ruth K. Chao, *Chinese and European Mothers’ Beliefs About the Role of Parenting in Children’s School Success*, 27 J. CROSS-CULTURAL PSYCHOL. 403, 403–23 (1996) [hereinafter Chao, *Role of Parenting*]. See also Leng Hui, *Chinese Cultural Schema of Education: Implications for Communication Between Chinese Students and Australian Educators*, 15 ISSUES IN EDUC. RES. 17, 18–19 (2005) (explaining how Confucianism and political utilitarianism strongly influence the Chinese view that “[i]mparting knowledge is seen, to a large extent, as a means to cultivate people . . .”); Chuansheng Chen & David H. Uttal, *Cultural Values, Parents’ Beliefs, and Children’s Achievement in the United States and China*, 31 HUM. DEV. 351, 352–54 (1988) (stating that education has long been important in China because it has been viewed as a vehicle for upward mobility).

85. See Chuansheng Chen & Uttal, *supra* note 84, at 354–56; *cf.* Chao, *Role of Parenting* *supra* note 84, at 403.

86. See Leng Hui, *supra* note 84, at 27; Chao, *Role of Parenting*, *supra* note 84, at 403; see also Ruth K. Chao, *Beyond Parental Control and Authoritarian Parenting Style: Understanding Chinese Parenting Through the Cultural Notion of Training*, 65 CHILD. DEV. 1111, 1111–19 (1994) [hereinafter Chao, *Chinese Parenting*] (finding that Chinese mothers were successful in helping their children succeed using “controlling” or “authoritarian” methods, despite contrary

make extraordinary sacrifices to ensure the best possible educational opportunities for their children.⁸⁷ China can attribute the culture-wide regard for these pro-educational values largely to the teachings of Confucius, the most respected Chinese educator of all time.⁸⁸

Nevertheless, Confucius's own teachings about education may have indirectly contributed to some of the problems that modern education theorists point to in Chinese passive-reception pedagogy. Like Socrates, Confucius held discussions with his students, but these discussions were different in character. Confucius was traditionally regarded as wiser and elevated in comparison to his students.⁸⁹ By traditional accounts, he offered declaratory answers to student questions—providing cultural foundation for the tradition of teaching by passive-reception lecturing that would later be cemented by the adoption of Kairov's *Pedagogics*.⁹⁰ Confucius's students thus learned from their master's wisdom, but they may have learned less about how to seek wisdom independently. By contrast, Socrates began from the humble (if questionable) premise that he was ignorant.⁹¹ The questions he asked his students challenged them to discover truth through their own process of reasoning. By engaging their opinions as a basis for discussion and encouraging them to discover meaning for themselves, Socrates implicitly conveyed that their ideas and reasoning abilities were worthy of respect.⁹²

To be sure, we certainly cannot ascribe all of China's educational habits solely to Confucius—but neither can we deny his deep and lasting impact on Chinese educational culture. One Chinese author describes the Chinese model this way:

There is a strong relation between Chinese teachers' teaching strategy and Chinese students' study strategy. In China, students seek "right answers" from their books and teachers. Study means remembering something by heart.

findings for European–American mothers, because of the high level of importance that Chinese mothers placed on “training”).

87. See Chuansheng Chen & Uttal, *supra* note 84, at 354–56; Chao, *Chinese Parenting*, *supra* note 86, at 1111–19.

88. See Chuansheng Chen & Uttal, *supra* note 84, at 354–56.

89. *Id.*

90. But see Abdul Paliwala, *Reclaiming Ancient Pedagogies in the Information Age of Learning*, drawn from paper presentation at the Learning in Law Annual Conference 2010, THE HIGHER EDUCATION ACADEMY, U.K. CENTER FOR LEGAL EDUCATION, <http://www.ukcle.ac.uk/files/downloads/879/2513.c5c39b41.APaliwala%20ancientpedagogies.pdf> (accessed February 4, 2013); ABDUL PALIWALA, *A HISTORY OF LEGAL INFORMATICS* (Univ. of Zaragoza Press 2010).

91. PLATO, *Apology*, in *FIVE DIALOGUES* 21, 26 b–e (Hackett Publishing 2nd Ed., 2002) (quoting from Socrates, “I am very conscious that I am not wise at all [I]t is likely that neither of us knows anything worthwhile, but he thinks he knows something when he does not, whereas when I do not know, neither do I think I know; so I am likely to be wiser than he to this small extent, that I do not think I know what I do not know.”).

92. Cf. Beattie, *supra* note 8, at 475–76.

Memorization is the main part of study. Once we have found the right answers, the next step is to copy them into our minds. This is not only the habit of law students, but of Chinese students from primary school to all forms of higher education. It is our character as students.

In China, classrooms are places where teachers convey knowledge to students. The students' responsibility is to remember what the teachers have told them. Chinese teachers prefer the lecture method over the Socratic Method. They want the students to remember what they have been told. Discussions with teachers are a supplementary part of the classroom experience. Parents and others important to Chinese students all reinforce the belief that remembering what the teachers have taught is the most important part of learning. The relationships between teachers and students are all about the teacher's authority. Teachers' every word is law to students. Teachers dominate the process of teaching and method. Students are the objects of teaching who are supposed to obey teachers' instructions obediently. We are not encouraged to challenge teachers very much. The teachers themselves never expect us to do it.

Today, more and more Chinese law teachers welcome students to share their ideas and join in class discussions. But most of the time, discussions in Chinese law classes are casual, lacking any deliberate planning. Teachers do this to create a good atmosphere in class, but they are not trying to teach critical thinking. Participating in class discussion will not help you get a good grade, and so students may avoid the embarrassing situation of answering incorrectly and losing face. Students think "why should I waste my emotion and energy to do that useless thing in classes?" Critical thinking is not a core skill in the teaching plan. No matter how much critical thinking you learn, your future depends on whether you can write down the right answers in the examinations. Students know that their grades are about right answers, so they are trained to find them from teachers and books instead of independent thinking.⁹³

In China, people often humorously compare the traditional method of conveying information to a student to "feeding a duck": you feed it, and feed it, and feed it until the duck is full, and then you're done.⁹⁴

In the Chinese model, students take as many as eight to twelve courses per semester, but they are not expected to prepare outside of class. Students generally wait until the end of the semester to assimilate course material, at which point they work hard to memorize the contents of their textbooks in order to reproduce them on their final exams. They only rarely participate in class, and they never challenge

93. Narrative by Xin Shuai, 2012.

94. See Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplant*, 59 J. LEGAL EDU. 60, 71 (2006) (discussing how legal education in China exemplifies the mainstream method of "stuffing the duck (*tianya jiaoxue*)"); Sharon K. Hom, *Beyond "Stuffing the Goose": The Challenge of Modernization and Reform for Law and Legal Education in the People's Republic of China*, in CHINESE EDUCATION: PROBLEMS, POLICIES, AND PROSPECTS 287, 298–301 (Irving Epstein ed., 1991). We wonder what actually happens to the duck in the metaphor after that point and whether it has any significance for the metaphor, but that's another matter.

the professor⁹⁵—even when they know the professor is wrong as a factual matter (as when incorrectly solving a math problem).⁹⁶

There are important advantages to the Chinese style of education. The method successfully conveys large quantities of information. In comparison to the American method, it enables students to be exposed to many subjects of study at one time. There can be no doubt that the Chinese educational system has created a workforce capable of incredible feats of economic growth and social mobility.⁹⁷ The university entrance examination system works to ensure equity among rich and poor students in allocating scarce seats in institutions of higher learning, and later examinations are based on similar premises.⁹⁸ Thanks to Confucian values, most members of society are deferential and supportive of the principles of excellence in education.⁹⁹

Education theorists are also studying another feature of the Chinese (and wider Asian) model of education that far outperforms its American counterpart: how parents and educators together inculcate an ethic of patience and hard work in their students that facilitates their mastery of difficult tasks and subject matter.¹⁰⁰ For example,

95. See Ting Wang, *supra* note 81, at 6.

96. One student author recalled vividly the day his math teacher made a series of mistakes while demonstrating a solution, and even though the teacher's math was plainly wrong, the students did not dare correct the teacher.

97. Cf. SHENGGEN FAN ET AL., INT'L FOOD POLICY RESEARCH INST., GROWTH, INEQUALITY AND POVERTY IN RURAL CHINA: THE ROLE OF PUBLIC INVESTMENT (Research Report 125, 2002), available at http://books.google.com/books?id=_DQo-VBHQoS&printsec=frontcover#v=onepage&q&f=false (explaining that the government's investment in rural education in China has contributed to both agricultural production and poverty reduction); Mei Li & Mark Bray, *Cross-border Flows of Students for Higher Education: Push-Pull Factors and Motivations of Mainland Chinese Students in Hong Kong and Macau*, 53 HIGHER EDUC. 791 (2007) (explaining the Chinese tradition of treating higher education as a ladder for social mobility, reaching back to the feudal era in which social mobility was achieved through the civil service examination system). But see Yan Wang & Yudong Yao, *Sources of China's Economic Growth 1952–1999: Incorporating Human Capital Accumulation*, 14 CHINA ECON. REV. 32 (2003) (reporting on the widespread availability of primary education in China but the narrow apex of higher education availability compared to other Asian nations).

98. See Yanqiu Zhao, *View on the Justice of College Entrance Examinations*, CHINA EXAMINATIONS 6 (2008). See also Wei Lina (魏丽娜), *College Entrance Examination Reforms Should Focus on Educational Equity in Rural Areas* (高考改革应关注农村教育公平), 18 Enrollment & Examination in Hubei 8 (2010) (examining the disparate impact of college entrance examination reforms on students from rural areas due to their rural educational backgrounds).

99. See *supra* notes 84–87 and accompanying text.

100. Alix Spiegel, *Struggle for Smarts? How Eastern and Western Cultures Tackle Learning*, NAT'L PUB. RADIO (Nov. 12, 2012), <http://www.npr.org/blogs/health/2012/11/12/164793058/struggle-for-smarts-how-eastern-and-western-cultures-tackle-learning>. See also D.D. PIKCUNAS, ANALYSIS OF ASIAN-AMERICAN EARLY CHILDHOOD PRACTICES AND THEIR IMPLICATIONS FOR EARLY CHILDHOOD EDUCATION (1986) ("Perseverance and attention to task is essential in the development

research by University of California, Los Angeles professor Jim Stigler and Brown professor Jin Lin reveals deeply contrasting Western and Eastern approaches in encouraging children to struggle with challenging learning material.¹⁰¹ In reviewing exchanges between children and their parents and teachers in both cultural contexts, researchers like Stigler and Lin have discovered countless ways in which American children are taught that struggle is “an indication of failure” and the result of “not being very smart,” while Asian children are taught that struggle is “an opportunity,” and “a predictable part of the learning process.”¹⁰² According to their research, Americans unconsciously convey that academic success is caused by intrinsic features like intelligence, whereas Asians teach that academic success resides “in what they do . . . not who they are.”¹⁰³ In the Asian approach, “[a]cademic success is not as much about whether a student is smart. Academic success is about whether a student is willing to work and to struggle.”¹⁰⁴

As one commentator explains:

All of this matters because the way you conceptualize the act of struggling with something profoundly affects your actual behavior.

Obviously, if struggle indicates weakness—a lack of intelligence—it makes you feel bad, and so you’re less likely to put up with it. But if struggle indicates strength—an ability to face down the challenges that inevitably occur when you are trying to learn something—you’re more willing to accept it.¹⁰⁵

Professor Stigler compellingly demonstrated the real world consequences of these contrasting orientations in the results of one study comparing American and Japanese first graders. As he explained:

“We decided to go out and give the students an impossible math problem to work on, and then we would measure how long they worked on it before they gave up.”

The American students “worked on it less than 30 seconds on average and then they basically looked at us and said, ‘we haven’t had this,’” he says.

But the Japanese students worked for the entire hour on the impossible problem. “And finally we had to stop the session because the hour was up.”¹⁰⁶

Stigler reports that this behavior reflects the focus in Eastern pedagogical approaches, where teachers “consciously design tasks that are slightly beyond the capabilities of the students that they teach”¹⁰⁷ so that “the students can actually experience struggling with something

of the Chinese student.”); Chao, *Role of Parenting*, *supra* note 84; Chao, *Chinese Parenting*, *supra* note 86.

101. Spiegel, *supra* note 100.

102. *Id.*

103. *Id.*

104. *Id.* (quoting Brown University Professor Jin Lin).

105. *Id.*

106. *Id.* (quoting UCLA Professor Jim Stigler).

107. *Id.*

just outside their reach. Then, once the task is mastered, the teachers actively point out that the student was able to accomplish it through the student's hard work and struggle."¹⁰⁸

Yet just as American educators worry about their students' inability to measure up to their Asian counterparts, Asian educators worry about other cross-cultural comparisons. Strikingly, their deepest worry is that the Asian educational model fails to effectively teach creative and critical thinking.¹⁰⁹ Professor Lin notes that Asian educators tend to worry that "[o]ur children are not creative. Our children don't have individuality. They're just robots."¹¹⁰

For exactly this reason, many Chinese scholars and teachers contend that it is necessary to change the prevailing approach. While the receptive learning model inculcates strong memory skills in students, it does not necessarily develop analytical or problem-solving skills.¹¹¹ Moreover, students tend not to prepare in advance of class in the receptive model, which hinders their ability to engage in critical analysis of the material that is taught during class. The Chinese examination system continues to reward recitation over creativity, despite recognition of the importance of creative problem-solving for society in general and in the fields of law and governance in particular.¹¹² Law courses emphasize definitions and abstract theory, grounding them only peripherally in factual examples. Students often feel that classes are too disconnected from the real world, and employers feel that recent graduates lack the skills to perform adequately in the workplace.¹¹³

In December of 2012, the Third Annual Meeting of the Asian Law School Deans Association took place at Renmin University Law School, offering a rich forum for discussion of these problems among educators from throughout China and Asia.¹¹⁴ Presentation after presentation reflected the view of most participants that legal education in China and other parts of Asia needs serious improvement.¹¹⁵ Participants called most vocally for improved synthesis between the study of abstract legal theory and the development of practical skills (reflecting the experiences reported by the student authors of this paper). To be fair, American legal education suffers a similar critique—but the disjuncture is even more palpable in China, where law teach-

108. *Id.*

109. *Id.*

110. *Id.*

111. Shiwen Zhou, *supra* note 72.

112. *Id.*

113. *Id.*

114. The 3rd Forum of Asian Law School Deans, THESIS COMPILATION (published by Renmin University of China Law School, Beijing, Dec. 2012) [hereinafter *ALSD Forum*].

115. *Id.*

ing has an even more tenuous connection to practice. Most American law teachers have at least briefly practiced law, but this is much less likely to be true in China. In fact, there are two separate fields of legal study in China, “faxue” and “falü” (roughly, “jurisprudence” and “law practice”). Law teachers generally graduate with degrees in jurisprudence, even though they will also teach those destined for legal practice. Comparative legal education research like that by Renmin Law Professor Ding Xiangshun reveals negligible institutional connections to the legal profession among the major Asian legal education traditions, which all share Confucian roots.¹¹⁶

An overwhelming consensus about the need to more effectively teach critical thinking and problem-solving skills emerged as a theme in the discussion of how to better integrate practical skill training into Asian legal education.¹¹⁷ For example, Dean Salongo Damdinsuren of the National University of Mongolia shared the story of Mongolia’s transition from a socialist regime to a democracy in 1990 and the consequences for legal education.¹¹⁸ She and her colleagues have been engaged in the difficult process of reforming legal education from what she called a “single-perspective” model to a “multi-perspective” model.¹¹⁹ In describing the relationship between reforming legal education and creating the foundations for the rule of law in Mongolian society, she told her peers: “We are now in the new legal era: the Rule of Law era. Legal education is both a driver and a reflection of the New Rule of Law era. We must balance theoretical knowledge with practical experience—combining traditional theoretical lectures with case studies and seminars.”¹²⁰ Linking law teaching with legal research, she explained, helps prepare law teachers in the next generation, passing the wisdom of the elderly professors on to those who will follow.¹²¹

Dean Wang Guigo of the City University of Hong Kong School of Law explained that legal education must evolve in light of serious market changes from globalization and new technologies.¹²² He em-

116. Ding Xiangshun, *A Comparative Study of Legal Education Reforms in East Asia*, in ALSD Forum, *supra* note 114, at 1.

117. ALSD Forum, *supra* note 114. Another theme at the gathering was the need for coordination among Asian legal systems and cooperation and communication in Asian legal education. *E.g.*, Letter from Dean Han Dayuan, Renmin University, ALSD Forum, *supra* note 114.

118. Salongo Damdinsuren, *Role of the School of Law, Natural University of Mongolia in the Asian Legal Education Cooperation*, in ALSD Forum, *supra* note 114, at 104.

119. *Id.* at 104–07.

120. Salongo Damdinsuren, Dean, Nat’l Univ. of Mong., The 3rd Forum of Asian Law School Deans (Dec. 11, 2012) (notes on file with author).

121. *Id.*

122. Wang Guigo, Dean, City Univ. of H.K. Sch. of Law, The 3rd Forum of Asian Law School Deans (Dec. 11, 2012) (notes on file with the author).

phasized that law schools cannot simply emphasize legal theory: “[S]tudents should have it, but they must also be trained with practical skills. Law school should be like medical school. Students need better training to make and exert good judgment—especially analytical skills. Ethics are critical. They must be able to adapt effectively to changing circumstances.”¹²³ Clinics and moot court are helpful, he explained, but what is most critical is that students learn the “problem-solving attitude.”¹²⁴ To demonstrate, he shared an anecdote distinguishing the creative thinkers from students unable to solve basic problems:

What do they do when there are not enough chopsticks at the table? The student from the old school will sit and wait until someone brings more. The students who will succeed are those who ask around to figure out if anyone at the table can use knives and forks, and then divides the available cutlery and chopsticks accordingly.¹²⁵

Finally, Professor Wang Liming, Vice President of Renmin University, explained that Asian law teaching should incorporate more U.S.-style case law legal education but that Asian law teachers should also acknowledge the success of the civil law teaching model.¹²⁶ He noted that Asian law schools should learn from the Socratic method but that they cannot just copy it because it is designed for case law, not civil law.¹²⁷ His point was that Chinese legal education should take the best of both systems and combine them: nurturing legal professionals “with multiple skill sets: law, policy, economics, social issues, diplomacy.”¹²⁸

The following case study advances this intuition by showcasing an adapted method of law teaching that takes the best of the U.S. Socratic method and adjusts it with respect for the unique features of Chinese culture and law. We are unconvinced that the Socratic method cannot be used with the civil law system; after all, Socrates was a Greek philosopher whose method had nothing to do with common law cases (nor does Professor Sandel’s world-famous “Justice” course). But we do believe that there is room to improve upon traditional American law teaching method for use in both the United States and China.

123. *Id.*

124. *Id.*

125. *Id.*

126. Wang Liming, Vice President, Renmin Univ., The 3rd Forum of Asian Law School Deans (Dec. 11, 2012) (notes on file with the author).

127. *Id.*

128. *Id.*

III. THE CASE STUDY

This Part describes the case study at the heart of our paper. It explains the specific classroom contexts from which our observations flow, including data on the host university, specific course subject matter, participants, university, and other relevant information. This part is written from the perspective of the principal author, Erin Ryan, who spent the year in China as a Fulbright Scholar and visiting professor at Ocean University of China. The project is in direct support of the China–U.S. Fulbright Program’s purpose as an educational exchange between the People’s Republic of China and the United States “to provide opportunities for cooperation and exchange in educational fields based on equality, reciprocity and mutual benefit.”¹²⁹

A. Host University

Ocean University is in the City of Qingdao, Shandong Province, on the coast of northeastern China across the Yellow Sea from South Korea. The sophisticated and metropolitan city of Qingdao is home to between seven and eight million people,¹³⁰ several of China’s largest national brands (including the famous Tsingtao Chinese beer), and one of the ten busiest commercial shipping ports in the world. Some twenty-five thousand graduate and undergraduate students are enrolled at the university,¹³¹ which is among the core comprehensive national institutions under the direct jurisdiction of the Chinese Ministry of Education.¹³² It ranks among the top eight percent of universities nationwide,¹³³ and the law school has an especially dynamic environmental law program.¹³⁴

129. *China Fulbright Program*, U.S. EMBASSY-BEIJING, CHINA, http://beijing.us.embassy-china.org.cn/fulbright_about.html (last visited July 6, 2013). Under the program’s auspices, Chinese and American educators, researchers, professionals and students pursue study, research, and teaching in each other’s countries.

130. *Qingdao Profile*, QINDAO, <http://english.qingdao.gov.cn/n2043295/n2048678/268950.html> (last visited July 6, 2013).

131. *A Brief Introduction to OUC*, OCEAN U. OF CHINA, <http://www.ouc.edu.cn/english/aboutouc/briefintroduction.html> (last visited July 6, 2013).

132. *Id.*

133. *Universities in China*, INT’L C. & U., <http://www.4icu.org/cn/> (last visited July 6, 2013) (ranking OUS at fifty-seven out of 743 ranked universities, putting it within the top 8%). Wikipedia reports 2,236 universities in China and ranks OUC at fifty-six, placing it among the top three percent of all Chinese universities. *Chinese University Ranking (Wu Shulian)*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Chinese_university_ranking_\(Wu_Shulian\)](http://en.wikipedia.org/wiki/Chinese_university_ranking_(Wu_Shulian)).

134. *Masters Program in Environmental and Natural Resources Law*, OCEAN U. CHINA, <http://iec.ouc.edu.cn/yingwenban/Article/ShowArticle.asp?ArticleID=98> (last visited July 6, 2013).

B. Courses

During my year at Ocean University, I taught four standard American law classes using modified American teaching methods: U.S. Property Law, U.S. Natural Resources Law, U.S. Land Use Law, and Negotiation. I adapted the Socratic method for use in all of the courses except the simulation-based negotiation workshop, so the case study focuses on the first three. I taught the property and land use courses at a basic level, introducing the fundamental principles of American property law specifically and the common law system more generally. I taught Natural Resources Law as an upper-level graduate survey, analyzing a series of regulatory systems and theoretical conflicts underlying their various approaches.

All classes met for one three-hour block each week. In the property and land use law classes, I assigned fifteen to twenty pages of English language readings (mostly cases) per week. In the natural resources law class, I assigned approximately thirty pages of English language readings (including legal, scientific, and policy materials and some cases). Attendance was required, and final grades were based on class participation (25%) and a written final examination in English (75%). In addition to regular participation in class discussions, students participated in class-specific exercises, including moot court appellate arguments in Property and Land Use Law, and group-based final presentations in Natural Resources Law.

Courses averaged about twenty-five students, including formally registered students and auditors.¹³⁵ Each class included students at the undergraduate, master's, and doctoral level. In addition, several full faculty members regularly audited my classes to study the Socratic teaching method for use in their own classes.¹³⁶

C. Language Issues

The language barrier posed a formidable hurdle for experimenting with new pedagogies. Although I had earned an undergraduate degree in Chinese language and culture years ago, my Mandarin skills are limited now, and I taught in English.¹³⁷ My students' English

135. Auditors were allowed only if they were willing to participate at the same level as registered students—i.e., perform all required reading and other class assignments and participate in Socratic dialogue and class discussion.

136. For example, Natural Resources Law included about thirty-five students, including twenty-five formally registered students and ten auditors. Of registered students, eighteen were at the master's level and eight were Ph.D. students. Auditors for this course included two regular members of the faculty, several masters and Ph.D. students, and one undergraduate.

137. A.B., East Asian Languages and Civilizations (China), Harvard University, 1991. The university preferred that I teach in English to help students develop their own English language skills.

abilities varied dramatically. Most had had between six and twelve years of English language training before joining my classes. The top 15% could discuss high-level concepts with me in English with little hesitation. The next 35% could understand me discussing these concepts in English, but they required translation assistance to express their own ideas at a high level. The next 35% needed translation assistance both to understand my high-level ideas and to express their own. The bottom 15% had great difficulty in both expressing themselves and understanding me in English. A few had to drop the course early in the semester because the language barrier was insurmountable.

D. Methodology

I began my teaching in China using essentially the same methods I use in my American classes. In the United States, my teaching usually includes a mix of Socratic dialogue (using both cases and problems), volunteer-based discussions, limited passive-receptive lecture, participatory exercises, and break-out groups. Having experimented with alternatives, I prefer the traditional “cold-calling” method of engaging students in Socratic dialogue without prior notice because I find it keeps the class engaged and spontaneous. My Socratic policy is demanding of student participation but supportive of student experimentation; I try to balance the potential for intimidation by conveying support to students and positively acknowledging all legitimate efforts at legal reasoning.

My goals for these classes were both to convey substantive content and also to introduce a new way of learning, and I conveyed these goals to my classes as transparently as possible at the beginning of each course. I was aware that my participatory methods of teaching would meet resistance, but I resolved to preserve certain elements regardless: Socratic dialogue, critical analysis, and student preparation. I was flexible with most other elements, especially those involving issues related to the language barrier, limitations in our shared cultural context, and differing cultural preferences relating to deference to authority.

My efforts at using the Socratic method were slow-going in the first week. Initially, I tried to engage students in Socratic dialogue directly, one at a time, the same way I would engage American students. Even though I explained as transparently as I could what I was doing and why, many students seemed incredulous that I would ask them to speak in class. Many were profoundly reluctant to engage with me, or even to speak at all. Whereas American students are generally reluctant to answer “I don’t know” within the Socratic dialogue (a potentially embarrassing experience), Chinese students frequently answered this way, more embarrassed to try and fail publicly than to

just avoid the experience entirely by professing ignorance at the outset. Many felt that their participation, effectively, would waste class time. Perhaps affirming these fears, others appeared genuinely uninterested in what their classmates had to say. And many students simply seemed not to understand my questions.

Concluding that part of the problem was language-related, I experimented early on with various means of providing translation assistance for students with the least-developed English. In a fortuitous move that would yield unintended benefits, I decided to put all the students into groups of four or five with at least one strong English speaker in each group. The strong English speaker acted as the official "interpreter" for the group. When I wanted to convey difficult content or ask an important question of the class, I would ask the interpreter to translate my words for the benefit of the group. When a member of the group was having difficulty expressing ideas to me when asking or answering a question, that student could say the difficult material in Chinese and ask the interpreter to translate for me.

My plan had been to use English to state important questions for students to think about, allow each interpreter a moment to translate for their group, and then call on individual students for answers to my now-clear questions. However, whenever the interpreters conveyed my questions to their group members, the groups erupted into intense conversations about possible meanings and answers that I was hesitant to cut short. The students wanted more opportunity to discuss their responses with the interpreter before answering me directly—perhaps to clarify the question or test-drive their initial answer—but as they sought clarification or advice, other students in the group would jump in and add their perspective. The groups found themselves embroiled in localized discussions of exactly the kind I had been trying to cultivate in the large group.

Realizing that our barriers had been as much about culture as language, I quickly adapted my methods to incorporate these small-group discussions into the class plan. I continued to use individually focused Socratic dialogue on relatively simple questions or exercises that required fast interactions with me. But for complex questions, especially when beginning review of a new case, I crafted our dialogue around these *de facto* break-out groups, where they practiced critical and creative inquiry with each other before engaging with me.

Making the change was relatively simple. Orally or on class slides, I would pose one or more questions for the group to work through before I would call on an individual. Questions ranged from matters of textual analysis (*What is the relevant legal standard? Where does the dissent part company with the majority?*) to policy matters for open discussion (*What are the advantages of one approach over the other? How would you draft an alternative standard?*). I would explain the

problems I wanted groups to work on first, using interpreters as needed, and then turn them over to their small groups to discuss them as a team. After a few minutes of small group discussion, I would call on individual members to compare responses on behalf of their groups, and then I would transition into a more traditional Socratic dialogue with individual students—moving back and forth among these different levels of inquiry. I came to think of what we were doing as “multilevel Socratic” teaching because students were shifting among different forums for creative and critical analysis, working both individually and as members of a team.

Under the Multilevel approach, student performance was transformed—even during the moments of purely individual Socratic dialogue. Early group work seemed to warm up their individual reasoning processes, the way one might first warm up an old car engine in cold weather. But there was clearly more than just these mechanics at work. Integrating multiple levels of Socratic dialogue also responded to important cultural factors that had been inhibiting their performance under the traditional method. These cultural factors include authoritarian regard for the teacher, aversion to direct confrontation, fear of public embarrassment (or losing face), and the general reluctance to draw attention to themselves as individuals, partnered with comparative willingness to act on behalf of a group.

The small groups provided a safe environment in which students could test-drive their ideas before sharing them with me and the rest of the class, which helped assuage their anxiety about losing face in front of their classmates.¹³⁸ This increased their confidence and their willingness to engage in Socratic dialogue with me afterward, even though I would always ask a series of additional questions that they did not foresee or prepare for within their groups. Students unwilling to volunteer their thoughts before small group discussion were much more willing to share their ideas after refining them with their peers, who demonstrated the ability to both add to and critique one another's initial suggestions. In the small groups, the students essentially replicated the kinds of conversations that I would normally hold with them through individual Socratic dialogue in the large group, but now everyone was involved.

Perhaps more importantly, and tapping into an important cultural difference between American and Chinese law students, the group method provided a critical support for Chinese students who were uncomfortable speaking on their own behalf but willing to speak on behalf of their groups. As described earlier, various cultural factors combine to make many Chinese students feel that their individual perspective may not be worthy of their classmates' time or atten-

138. *E.g.*, Ting Wang, *supra* note 81, at 6.

tion.¹³⁹ The fact that Chinese students are uncomfortable being singled out may also relate to cultural factors emphasizing group identity over individuality (especially stark in comparison to American law students, among whom individuality is more highly valued).¹⁴⁰ Their reluctance to voice individual opinions may stem from similar cultural factors or others that make doing so a potentially risky endeavor (especially if they depart from what is perceived as the mainstream view).¹⁴¹

Most importantly, for cultural reasons reviewed in section II.B and affirmed in Part IV, Chinese students are exceedingly reluctant to challenge authority, engage in confrontation, or directly criticize someone's ideas.¹⁴² Traditional Socratic teaching demands each of these culturally unacceptable behaviors on the part of the students. When engaging in Socratic dialogue with individuals, I often ask the student to show me what is wrong with some proposition that I myself make. For example, I might purposefully take on the perspective of one side in a dispute and ask the student to argue the other side. Or I might take an outrageous position—"A crying baby that interferes with neighbors' peace and quiet should be removed, just like a barking dog—right?"—for the purpose of sparking debate or to force the student to unravel why my position is outrageous. But asking a Chinese student to take on my own arguments in this way runs counter to almost all of his or her prior educational training. So does asking that student to debate a position taken by a classmate, which is also standard fare in the Socratic classroom.

Nevertheless, engaging with me on behalf of their group is a wholly different matter on each of these fronts. Rather than being singled out, now they are representing the work-product of their team—and this umbrella of safety somehow seemed to extend even when I would subsequently engage them in Socratic dialog as individuals. The group method also provides an important means of saving face when students voice individual opinions or encounter difficulty in answering my questions. They can share the weight of their individual opinion with others in their group, and they can share the burden of challenging my authority when I ask them to do so. If they have trouble with my question, it is less embarrassing because it is not just them who did not foresee this particular angle: it was the entire group.

139. See *supra* section II.B; see also Shu Ya Zhang & Angela L. Carrasquillo, *Chinese Parents' Influence on Academic Performance*, 10 N.Y. ST. ASS'N FOR BILINGUAL EDUC. J., 46 (1995) (discussing how Chinese students seek conformity, obedience, and group dependence).

140. See Shu Ya Zhang & Carrasquillo, *supra* note 139, at 48.

141. See *id.*

142. E.g., Ting Wang, *supra* note 81, at 6.

Similarly, the group method eases the difficulties involved with critiquing the ideas of other students because—again—the mechanism of group deliberation dilutes the vulnerability of any single student. All ideas on the table are the product of a group discussion. Students worry less about singling out another student in a way that could embarrass them. There is less vulnerability for any one student, and accordingly, less anxiety about saving face.

To facilitate our Socratic experience, I introduced additional features to the classes to help reverse the presumption that only the teacher has important knowledge to convey and to help acclimate students to their responsibilities of participation in my classroom. For example, I began each class with an exercise called “In the News,” a student-led discussion of news events relating to whatever substantive area we were covering.¹⁴³ Each week, one student was assigned to share a relevant news event from the Chinese media and summarize the key legal issues (speaking spontaneously rather than reading a prepared statement). After the first student presented, I would select another to comment on the presentation, and then I would invite volunteers from the rest of the class to weigh in. I explained to the class that the assignment was designed to encourage them to connect the abstract legal concepts we were studying to newsworthy events in the real world, to compare international approaches, and to practice oral participation and discussion skills. At first, students were reluctant and intimidated by presenting to the class, but they took the assignment seriously and began producing fascinating stories for our discussion. Their oral presentation skills improved, and they became more comfortable with their roles as co-teachers in the participatory classroom.

I also ran mock appellate arguments several times during the semester. To preserve the Multilevel Socratic environment, I assigned each student the role of either a litigant or a judge and had them practice exchanging opening statements and engaging in oral arguments within their small groups before transitioning to a round-robin version of oral argument in front of the large group. In the large group exercise, I would randomly call on one judge to ask a question of the plaintiff. Then I would randomly call on a plaintiff in another small group to answer and on a defendant in a third group to rebut. Next I would call on a different judge in another group to ask a question of the defendant, call on a new defendant in another group, and so on. The students, having no previous experience role-playing or even witnessing this level of legal intellectual exchange, were electrified by the exercise.

143. I am grateful to Steve Barnes, China Programs Director at Penn State Law School, for providing me with the genesis of this assignment.

Apparently, the students also perceived great value in the oral argument exercises. In testimony, I had to miss a class because of my traveling schedule during the spring semester, and I offered to either cancel the class or give them an oral argument exercise to do on their own. I was surprised when they unanimously voted to do the exercise in my absence. I was even more surprised to learn that they all did it (and by all accounts, did an excellent job).

E. Instructor's Evaluation

I had hoped that the students would be interested in learning a new way of learning when I decided to emphasize critical thinking over content (knowing that I would not cover as much material this way as I could through pure lecturing). I was very pleased to discover that for many students, the new learning method itself became the most important asset of the course.

There was clear resistance at the beginning, when students were still struggling with the transition to a full-time English classroom and with the responsibilities of out-of-class preparation (especially in a foreign language). I was sympathetic to both of these plights, given how difficult it can be even for first-year American law students to make sense of cases written in their native tongue. I tried to adjust for the language barrier as much as I could, but I remained relatively demanding about preparatory reading for the obvious reason that Socratic law teaching methods cannot work unless students prepare in advance. Fortunately, the students steadily improved as they adjusted to their new role and responsibilities in my classroom.

Resistance was not entirely related to workload. Some students expressed anxiety early on about wanting more clarity about the "key points" or the "right answer" at the end of a given class. These comments reminded me of American students wanting to know "what the black-letter law is" when the point of the lesson was doctrinal uncertainty. In China, the problem is even more pronounced because many Chinese law teachers really do give their students lists of key points to copy down.¹⁴⁴ I explained to these students that in many classes, the key point of the lesson was not to reach a specific answer but to understand the best arguments in favor of multiple possible answers and the reasoning process we use to explore them. Some of these students later expressed revelation, and then fascination, that this was a legitimate subject of inquiry in and of itself.

Students were especially dumbfounded by the novelty of the judicial dissent—the idea that two or more very smart judges could actu-

144. Kara Abramson, *Paradigms in the Cultivation of China's Future Elite: A Case Study of Legal Education in Western China*, 7 *ASIAN-PAC. L. & POL'Y J.* 302, 334 (2006).

ally come to opposing conclusions on the basis of the same facts and law. For example, the first case I assigned that included a dissenting opinion was *Pierson v. Post*,¹⁴⁵ the iconic old property case about which hunter should claim rightful ownership of a slain fox. At first, the students were utterly baffled by the dissent—indeed, by the very idea of a dissent. Understanding this as the losing point of view, they very reasonably asked, “What’s the point?” “Why would a judge bother to write a dissent?” It became an excellent basis for exploring our diverging norms and expectations about how the legal system should work, as well as differences between the operation of the common and civil law systems. The second reaction of the students was astonishment to see two equally compelling legal arguments pushing in two separate directions. Until then, they had been primarily exposed to legal theories pointing to one clear answer (what they will call in Part IV “the One-and-Only-Answer approach”). Here, both the idea and the execution of a persuasive dissent proved excitingly destabilizing concepts for them. Student author Yuan Ye remembers that moment this way:

I was fascinated about the opinions because theories in both majority and dissent made perfect sense for me. Majority rewarded the person who got the fox first and dissent rewarded the person who invested more labor in catching fox. There were so many good arguments on both sides that made me feel the debate on acquisition will never end. Suddenly I realized that legal issues were not as simple as the concepts and rules that I had learned in Chinese law classes. I had to think through the reasoning process and understand arguments on both sides.

After the initial period of transition to this new way of thinking and learning about law, the hunger among most students for participatory learning became palpable. They wanted more participatory learning. They wanted to spend time in the small groups. They wanted to be asked questions and to figure out the underlying theory on their own. When I would occasionally revert to a traditional lecture format, as I might do to move us through material more quickly when time was scarce, the very same students who initially craved the familiar lecture format were disappointed because they missed the opportunity to participate more actively in their learning.

By my own evaluation of student performance, both participatory learning and critical thinking skills improved dramatically, if unevenly, over the course of the semester. Unsurprisingly, the students with the best English skills made the most improvement—no doubt because they had an easier time understanding me and the readings. But even the students without strong English skills made marked improvement. I was especially pleased to read the final exams—for each class, an open-book, take-home essay question requiring simple but

145. 3 Cai. R. 175 (N.Y. 1805).

raw critical analysis.¹⁴⁶ To give students sufficient time to compose meaningful answers in English, I offered three days to work on each exam. I was delighted to discover how well most students performed. I especially liked the exams by students who managed to demonstrate to me a strong critical legal analysis using terrible written English (which demonstrated to me that it was genuinely their own work). The strong critical thinking skills demonstrated that they had learned substantially despite our language barrier.

One negative consequence of emphasizing group work-product during our lessons did materialize at exam time when my interpretive group leaders warned me that many students would assume it was acceptable for them to collaborate in groups for their final exams. Although I encouraged collaborative work in some course projects performed in groups, I pushed hard against collaborative tendencies on the final exams, which I clarified were to be strictly individual work. Although a few students failed to grasp my proscription on plagiarizing from the textbook (and did so openly and without guile), none of the exams showed evidence of collaboration among classmates—demonstrating that the students were able to work independently in appropriate circumstances after working in groups during class sessions.

F. Student Surveys

At the end of the first-semester courses, we gave the students an opportunity to evaluate their learning experiences in an anonymous student survey, from which we received nearly fifty responses.¹⁴⁷ We designed the instrument to probe the success of our pedagogical goals of developing students' abilities to think critically and creatively on demand, both as individuals and as members of a team. Like a typical American student evaluation, we distributed the surveys at the end of the last class and before the final exam. But unlike a typical American evaluation, which asks about the quality of the teaching or course materials, we focused directly on the students' personal experience with six skill-building goals.

To this end, we provided a series of six statements relating to these goals and asked students to rank them on a scale from one to five, where five indicates strongest agreement that the statement reflects the student's personal experience. The statements, together with median and mean scores, are as follows:

146. I chose not to give a standard American issue-spotting exam, which would have been too remote from their previous experience.

147. We received twenty-nine responses from the natural resources law class and eighteen responses from the property law class, for a total of forty-nine surveys. We did not resurvey the land use law class because most participants were also members of the property law class.

1. "The course helped develop my ability to think critically." (Median 4; mean 4.168.)
2. "The course helped develop my ability to think creatively." (Median 4; mean 4.022.)
3. "The course helped develop my ability to express ideas orally." (Median 4; mean 4.108.)
4. "The course helped develop my ability to work in groups." (Median 4; mean 4.233.)
5. "The course helped develop my ability to work individually." (Median 4; mean 3.799.)
6. "It helped me learn to 'think on my feet' (quickly and under stress)." (Median 4; mean 4.129.)

All statements shared a median score of 4 and closely aligned medians, indicating consensus that each skillset was effectively developed during the courses. Notably, the highest-scoring statement referred to students' abilities to work in groups (4.233) and the lowest-scoring statement referred to students' abilities to work individually (3.799). Although this could reflect a defect of the method's focus on group work, we suspect it more likely reflects Chinese cultural preferences for group rather than individual focus.¹⁴⁸

In addition to asking about class preparation habits, our survey also invited students to respond to a series of open-ended questions about their experiences in the course:

- A. Aside from any language-related difficulties, what was the most challenging aspect of the course?
- B. What was the most interesting aspect of the course for you?
- C. What was the most valuable aspect of the course for you?
- D. Setting aside any English language-related difficulties, please comment on how much content you recall from class lectures as compared to your other classes.
- E. Did you learn anything from the course other than substantive content or knowledge?
- F. Please compare your experience in this course with your experiences in other law courses.
- G. Setting aside language differences, what about this class was most different from other law courses?

Students most frequently answered that the most interesting aspect of the course was the new way of law teaching and study that they had encountered. Sixty-four percent responded this way, variously referring to the "ask and answer method," "discussion," "oral argument," "group study method," "thinking and answering questions

148. Further research would help clarify this point.

quickly,” and the “active teaching style.” They most frequently reported (47%) that the new learning model was the most valuable aspect of the class. The students referenced new thinking styles and reasoning abilities, the ability to express themselves, their engagement with assigned readings, and the group study model as reasons for this assessment. Their responses indicate not only that the students recognized the differences between our methods and their usual classroom experiences, but also that they preferred the Multilevel Socratic model. However, students also frequently reported that understanding the American way of legal thinking was among the most challenging aspects of the course.

Of those who responded, students split evenly on whether they experienced better recall of substantive material learned in a Multilevel Socratic environment in comparison to other classes.¹⁴⁹ Nevertheless, we received fascinating responses to this question from those answering in both directions. One student who reported recalling more substantive knowledge than in other courses explained, “I can recall more content in this course than in other courses because of more involvement.” Another reported recalling “less than other classes, but it is the way I learn that benefit most.” Another said, “less than other classes, but all I learn were never heard and can’t be heard from other classes.”

Every student affirmed that he or she learned something more than substantive knowledge from the class (100%). Students most frequently discussed the new ways of thinking and learning that they had developed, including analysis, logic, preparation, research, and expression (43%). Among these respondents, several referenced awakening to the idea of “no right answer” and “being tolerant to different ideas.” Students next most frequently responded that they had learned important teamwork and cooperation skills (19%).

Similarly, students frequently referenced the valuable development of critical- and creative-thinking skills through classroom participation when comparing their experience in these courses with others (26%). As one student wrote, “More questions and participation help to develop the ability to think critically and creatively.” According to another, “This is more challenging than other law courses, I must be responsible to my argument to certain extent, to argue for it, to defend it, to revise it.”

In answer to the question asking specifically what was most different in this class from their previous classes, students most frequently

149. About half of the respondents (twenty-six) answered this question in ways that led us to question whether they had properly understood our intended meaning. Of those who responded as expected (twenty-one), ten reported being able to recall more, eight reported that they recalled less, one answered that they did not know, and two did not answer.

pointed to the use of actual cases and controversies to study law, rather than studying legal rules and theories in the abstract (34%). As one explained, "This course granted me a chance to systematically study the law with real cases, so, when I meet some case in the future, I would know how to deal with [it]." Another wrote, "The content in this class has so many examples, I can think the problem from any aspect" The next most frequent answers referenced the use of critical thinking skills (21%) and the different relationship between teacher and student (15%). As one student wrote, "Other law courses are controlled by teacher, this class we talk with teacher and exchange our ideas." Students also mentioned the distinctive peer-learning model: "We often have chances to discuss with my members and express the idea of myself."

Finally, we invited students to use the back of the survey page to elaborate on any previous answers, to comment on our teaching methods or legal education generally, or to offer any other thoughts they wished to share. In their responses, students discussed how the course had helped them develop skills of independent analysis, practical application, and expression. They praised the discussion, role-play, and other student participation elements of the courses, often noting a preference for this new way of learning rather than their traditional classroom experiences. Typical responses included:

- "There is almost no discussion in Chinese classes. The class is like a monopoly of the professor, which makes students fall asleep. I love questions asked in property law and give to opportunity to express what I'm thinking."
- "Legal education should be combination of knowledge and skill, but Chinese legal education put more weight more knowledge and skill part is overlooked."
- "More involvement in this class compared with [other] classes where professors keep talking and students just listen."
- "Class is a good balance between learning theories and practice."
- "Chinese legal education need to give more opportunities to students to express their ideas."

In sum, though our sample size was necessarily small, the survey responses suggest that students successfully developed both the independent and group-based creative- and critical-thinking skills that we were aiming for pedagogically, at least in comparison to their usual classroom experiences.

G. Multilevel Socratic East and West

I initially introduced break-out groups to provide translation assistance, but the interpretive groups offered even greater value in allowing us to adapt the Socratic approach for the cultural challenges it creates in an Eastern environment. We joked that this was "The Socratic Method with Chinese Characteristics," but it was immediately clear to me how valuable the same adaptations would be in my Ameri-

can classroom, where the near exclusive focus on individual Socratic repartee detracts from the development of critical group-competency skills. Typical American law teaching does little to prepare students to work effectively in teams, reason creatively through group deliberation, or collaborate as co-learners with others—even though their future work with clients, coworkers, adversaries, and judicial personnel will require all of these skills.¹⁵⁰

Moreover, requiring ongoing, universal student participation in grappling with the difficult issues at the heart of Socratic analysis can encourage American students to engage in the valuable academic struggle that fortifies the Eastern ethic of hard work and discipline (and which is comparatively under-supported in Western cultures). Students rotating through small group, intergroup, and individual Socratic inquiry are more likely to continue struggling with difficult material, both because they are more actively engaged individually and because they are additionally accountable to their peer group.

Multilevel Socratic teaching thus offers important pedagogical values on both sides of the Pacific. It provides an essential means of training students to individually master critical thinking and analysis skills that are underdeveloped in eastern contexts like China. Simultaneously, it provides forums for students to develop group-based creativity and collaboration skills that are underdeveloped in western contexts like the United States.

Obviously, nothing about the Multilevel Socratic Method is rocket science. Plenty of other academics have doubtlessly done similar things (and plenty more creative) in their own classrooms. I myself have long used break-out groups for selected exercises in my American classes when I want every student—and not just the one I call on in Socratic dialogue—to have the experience of talking through an answer. But until this point, I had used group-learning sparingly in comparison with traditional Socratic dialogue—maybe two or three times over the course of the semester. In China, I learned to make it part of the fabric of the class, every class. Rather than three times per semester, it was something I might do three times per hour. As the fabric of the class evolved, so did our focus, and ultimately, our vision. Shifting continuously between traditional Socratic dialogue and nested small group exploration expanded our critical analysis into multiple dimensions, while adding wholly new reservoirs for creative inquiry, endeavor, and skill building.

Since returning to the U.S., I have employed the Multilevel approach in my American classes with encouraging early results. Even American students culturally engineered for the Socratic method (in that they are generally comfortable at the center of attention, taking

150. See generally Weinstein, *supra* note 48.

credit for their ideas, and arguing with the professor) did better with a mix of individual and group inquiry. The simple adaptation of regularly mixing group deliberation into traditional Socratic dialogue filled holes I had not fully recognized previously. In the Multilevel Socratic classroom, every student speaks. Every student directly and kinesthetically grapples with the problem. Full class discussions between break-outs take place at a higher level, and students participate from a posture of greater investment in the overall class project.

Indeed, an emerging literature suggests just how profound the benefits of peer instruction can be, even in the realms of math and science, where (in stark contrast to law) there is almost always a single right answer.¹⁵¹ Education theorists are studying the ways that peer instruction encourages collective creativity, builds reasoning, and enhances retention.¹⁵² I was reminded of our own experiences with Multilevel Socratic teaching by the account of Harvard physics professor Eric Mazur, a peer-instruction pioneer, of his experience replacing lecturing with peer instruction in his introductory physics class.¹⁵³ In his classroom:

[T]he students—there are nearly 100 of them—are in small groups discussing a question. Three possible answers to the question are projected on a screen. Before the students start talking with one another, they use a mobile device to vote for their answer. Only 29% got it right. After talking for a few minutes, Mazur tells them to answer the question again. . . .

This time, 62% of the students get the question right. Next, Mazur leads a discussion about the reasoning behind the answer and then the process then begins again with a new question. This is a method Mazur calls “peer instruction.” He now teaches all of his classes this way.

“What we found over now close to 20 years of using this approach is that the learning gains at the end of the semester nearly triple,” he says.

One value of this approach is that it can be done with hundreds of students. You don’t need small classes to get students active and engaged. Mazur says the key is to get them to do the assigned reading—what he calls the “information-gathering” part of education—before they come to class.

“In class, we work on trying to make sense of the information,” Mazur says. “Because if you stop to think about it, that second part is actually the hardest part. And the information transfer, especially now that we live in an information age, is the easiest part.”¹⁵⁴

Researchers have even been able to quantify the benefits of peer instruction over pure passive-reception lecturing in mathematical

151. Ertan Salik, *Peer Instruction: A Better Way to Learn*, FOUNTAIN MAG. (Jan.–Feb. 2008), <http://www.fountainmagazine.com/Issue/detail/Peer-Instruction-A-Better-Way-to-Learn>; Robyn L. Miller, Everilis Santana-Vega & Maria S. Terrell, *Can Good Questions and Peer Discussion Improve Calculus Instruction?*, PRIMUS, Vol. XVI, No. 3, 193 (2006), available at <http://www.math.cornell.edu/m/sites/default/files/imported/People/Faculty/goodquestions.pdf>.

152. *Id.* See also Kerr, *supra* note 1, at 124 (discussing a professor’s use of small-group and classroom discussions in addition to traditional Socratic dialogue).

153. Hanford, *supra* note 6.

154. *Id.*

terms.¹⁵⁵ As Professor David Hestenes of Arizona State University argues, “Students have to be active in developing their knowledge . . . they can’t passively assimilate it.”¹⁵⁶

Such sentiments lead almost prophetically to the observations of our own students and student authors in the sections that follow.

IV. STUDENT EVALUATION OF THEIR EXPERIENCES WITH THE METHOD

This section presents the observations of the student authors about their experiences with the Multilevel Socratic Method. These authors come from all perspectives in the spectrum of Chinese higher education. Yuan Ye is a third-year undergraduate major in law.¹⁵⁷ Li Haomei is a first-year master’s-level graduate student.¹⁵⁸ You Ran and Xin Shuai are doctoral candidates. You Ran has been a law lecturer (comparable to an American assistant professor) to law majors at the nearby China Petroleum University for five years.¹⁵⁹ Xin Shuai has been teaching non-law-major undergraduates at the Ocean University International School for two years.¹⁶⁰

In the following section, the student authors share their thoughts about: (1) case-based teaching as compared to theory-based teaching; (2) critical thinking as compared to the “one-and-only-answer” approach to learning; (3) guided inquiry as compared to passive recep-

-
155. *E.g.*, Ronald N. Cortright, Heidi L. Collins, & Stephen E. DiCarlo, *Peer Instruction Enhanced Meaningful Learning: Ability to Solve Novel Problems*, 29 ADVANCES PHYSIOLOGY EDUC. 107, 111 (2005) (demonstrating empirically that peer instruction enhanced both the mastery of original material and meaningful learning overall); Salik, *supra* note 151 (reporting on research demonstrating significant learning gains from peer instruction); *see also* Hanford, *supra* note 6 (reporting on research that “provides a compelling case against lecturing”).
 156. Hanford, *supra* note 6 (interviewing Hestenes).
 157. Yuan Ye is from the city of Zibo in central Shandong Province. He is completing his undergraduate degree in law from Ocean University of China while beginning a J.D. program at the University of Arizona Law School.
 158. Li Haomei is from the city of Linyi in southern Shandong Province. She graduated from Ocean University in 2011 and is continuing her study in law as a master’s degree candidate in the Department of Law and Political Science.
 159. Xin Shuai is a native of the City of Qingdao in Shandong Province. He graduated from the law department at the Weihai Campus of Shandong University in 2006, and he received his master’s degree in law at Ocean University in 2010. He is currently a doctoral candidate in law at Ocean University and a visiting researcher at the University of California-Berkeley School of Law. He teaches at the International Education School at Ocean University.
 160. You Ran is from Jiaozhou City in Shandong Province. She graduated from the Shandong University School of Law with a Bachelor’s Degree of Law in 2004 and from the University of Sydney Law School with a Master’s Degree of Laws in 2007. She is presently an assistant professor of law at China University of Petroleum (North Eastern), where she teaches Environment Law and International Energy Law. She is currently finishing her doctoral degree in energy law in the School of Law and Politics at Ocean University.

tion; (4) the value of student preparation before class; (5) the focus on reasoning process rather than doctrinal result; (6) the quality of performance sought by our open-book exam compared to the memorization required by a traditional Chinese exam; and (7) the value of prior practical legal experience on the part of their instructors. Learning about these students' Multilevel Socratic experiences in their own voice is surely among the most valuable features of this Article.¹⁶¹

A. Case-based Teaching vs. Theory-based Teaching

In our case study, we experienced important differences between Chinese and American legal education. In China, legal education begins with the direct transmission of legal theory, while in American law classes, the underlying theory is discovered through the application of legal doctrine to cases and controversies.¹⁶² The Chinese method is driven by top-down learning from theory to doctrine, while the American method is a mix of top-down and bottom-up derivation of legal doctrine and theory.¹⁶³ The different orientation between Chinese legal education and American legal education displays not only in classes, but also in the textbooks we use and how we prepare for classes.

Because Chinese classes usually don't involve student participation, students do not usually read the textbook before class. Beyond that, the textbook is uninteresting. From our perspective, Chinese law textbooks emphasize theory for the sake of theory. While case teaching emphasizes theory in the context of actual legal controversies, Chinese texts use theory as the primary teaching center. They are full of theoretical explanations of statutes, definitions of legal terms, and scales of legal doctrines, but they rarely include cases.¹⁶⁴ American textbooks are bigger because they include not only theories but also many cases.¹⁶⁵ Judicial opinions in America include lots of reasoning and analysis and sometimes have opposing opinions derived from competing values. Cases in China are more concise and don't

161. This section, primarily written by the Chinese student authors, reports on their own ideas, opinions, and experiences, and is therefore cited lightly in comparison with previous sections. As the native English-speaking author, Ryan has lightly edited the language for clarity, preserving their voice as much as possible.

162. *E.g.*, Davis & Steinglass, *supra* note 1, at 263.

163. *Cf.* Dan Guttman, *Different Operating Systems*, ENVTL. F., Nov./Dec. 2008, at 27, available at www.epa.gov/ogc/china/guttman.pdf (contrasting the top-down elements of the Chinese authoritarian model with the mixed top-down and bottom-up elements of American constitutional and common law).

164. Chinese law textbooks are similar to American law hornbooks or treatises but without cases. *See, e.g.*, CUI JIANYUAN (崔建远), CONTRACT LAW (合同法) 43-44 (Law Press, China 5th ed. 2010) (explaining contract "offer" in definitional terms).

165. *E.g.*, Abramson, *supra* note 144, at 333.

have as much reasoning, because Chinese judges apply statutory regulations and are not required to justify their opinions with judicial precedent.¹⁶⁶

For us, the biggest difference between theory-based and case-based legal education lies in how classes are taught. In Chinese legal academia, only scholars who are very good at theories are considered good thinkers. To be good at practice is good but not as good as being good at theory. Even famous law professors who practice are seen as less intelligent than those best known for solving intricate theoretical problems. Consequently, in Chinese legal education, law professors lay more emphasis on explaining statutory doctrines, mostly through very theoretical language. They do not derive legal rules from cases or apply them to real world situations. They prefer answering theoretical questions to solving practical problems. For example, one Chinese environmental law professor devoted a class to one question—“*What kind of relationship does environmental law adjust, the relationship between person and person, or the relationship between person and nature?*”—without once considering how the answer could actually help solve environmental problems. Professors sometimes use short problems in their teaching, but only clear and concise problems that illustrate theoretical concepts unambiguously. There is always a clearly correct answer, and the problem is just a supplemental illustration.

In American law classes, we learn legal doctrines and rules through cases. We learned the IRAC method (Issue, Rule, Application, Conclusion) to analyze cases. Class gradually goes deeper from factual issues to legal reasoning and theoretical rationales. Learning under case-based teaching method, we feel that we will be able to practice law as lawyers because now we know how to think. This is a feeling we have never had from our Chinese law classes. In American property law class, we had oral argument practice. Most students enjoyed the process of using doctrines and rules that we learned in the class to defend our clients. It is very different from considering what relationship the environmental law adjusts.

We feel that legal education in China could be improved by learning from the case-based teaching methods so that law students can actually learn to use law to solve problems. As law students, we often receive kind warnings from lawyers or judges who graduated from our school not to be too optimistic about how our training will help our future legal careers. “*When you step into legal businesses,*” they say,

166. In contrast with lengthy American opinions, Chinese courts' opinions average between five and ten pages long. Telephone Interview by Yuan Ye with Yu Ming, Law Professor, Ocean Univ. of China (Jan. 3, 2013).

"you almost have to start from zero."¹⁶⁷ Concepts and theories that we memorize at law school for four years are of very little help because we are not trained to use them in any practical context.

Of course, these different teaching methods come from our different legal systems. The American common law system develops legal rules through judicial precedent. Legal analysis, reasoning, and argument are essential parts of judicial decisions establishing clear legal rules or distinguishing outdated doctrines. But China is a civil law state in which statutes are always primary and judicial decisions have no binding effect. Chinese judges do not need to address previous cases or lay out precedential arguments, which may be why Chinese cases are less useful in teaching. But even if we do not use actual cases, we could still use problem exercises. The point is to apply theories to practical problems, not memorize them for their own sake.

B. Developing Critical-Thinking Skills vs. Learning the "One and Only Answer"

Traditional Chinese law teaching puts students in a position of passive listening in the classroom and provides no incentive for students to think independently, critically, or creatively. The Multilevel Socratic Method of teaching produced the opposite result. The Socratic element encourages student initiative, as students learn to think through legal problems on their own by answering the professor's questions. Students are no longer imparted knowledge passively. Instead, they actively seek out ways to solve the very problems with which the law itself struggles. In class discussions, the professor uses a controversial issue as a basis for raising a continuous stream of questions for the students. The professor encourages them to think about the consequences of their first responses and generally stimulates them to participate actively in debate on many levels. Students experience a brainstorming session in every class.

We found it challenging at first because Chinese students always hold a respectful attitude toward authority and toward accepting the standard answer. We hesitate to offer opinions opposite to what teachers tell us in class, even if we have them, because opposing the teacher is rude and offensive behavior.¹⁶⁸ But in China, teachers are

167. Cf. PRESIDENT & FELLOWS OF HARVARD COLL., THE LEGAL PROFESSION OF THE PEOPLE'S REPUBLIC OF CHINA 2 (2012), available at http://www.law.harvard.edu/programs/plp/pdf/Chinese_Legal_Profession.pdf ("Prominent Chinese law professors acknowledge that China's legal education does not meet the profession's demands and law firm employers often complain that law graduates lack necessary professional and practical knowledge.").

168. See Ting Wang, *supra* note 81, at 6. See also Erie, *supra* note 94 (discussing the result of student surveys gathered from law students at Tsinghua University Law School in Beijing, which found reoccurring ideas of respect or "saving face")

always given priority, whether what they teach us is truth or not. We are taught to be humble in front of teachers' opinions. This means that we should not challenge teachers' opinions or be too stubborn to abandon our own opinions, which are considered naïve. Also, criticizing others, however reasonable, is often seen a risky thing in China because it will hurt other people's self-esteem. We do not want others to lose face.

The same attitudes influence Chinese legal education. In China, the underlying assumption shared by law professors and students, consciously or unconsciously, is that students know nothing until teachers tell them. Before students understand the basic theory, it's not worthwhile to hear their premature ideas. Law professors teach us the right ideas and standard answers. Students with different ideas do not usually have enough courage to express them because they expect them to be of little value. Students don't even bother to critically think through what they are taught because we subliminally assume everything professors teach us is the true "one and only answer." Chinese law professors often teach with an authoritative tone, suggesting: *"This is the only accurate explanation to the problem; all other explanations are wrong."* For example, one professor highly proficient in international law told us outright that "polluting" his classes with discussion would bring nothing but superficiality and never reach the depth of theory or principle to which he aims his teaching.

It seems to us that American students must have very different qualities and mindsets from Chinese students. They must hold skeptical attitudes toward arguments from other people, even arguments from authority, while Chinese students always try to appreciate and memorize opinions of other people—especially people with authority. Perhaps American students are encouraged to consider things from different perspectives and to challenge authorities if they can convincingly elaborate their ideas. Maybe it's easier for American students to adapt to the Socratic method because of these mindsets. But for Chinese students with an expectation for the "one and only answer," it is difficult for us to get used to classes full of open-ended questions and to critically analyze opinions by judges with great authority.

It takes time to achieve that transition. At the beginning of our classes with Professor Ryan, many students were frustrated. They complained: *"Why can't we get straightforward answers and well-summarized principles like we get in Chinese law classes?"* *"How can such simple issues that seem so ordinary suddenly become such complicated problems that bring us nothing but endless confusion?"* Going from being given the "one and only answer" to thinking critically to forming

underlying the student and teacher relationship in traditional Chinese Education).

our own opinions is a difficult transformation because we have to fundamentally change our assumptions and values about learning.

But we have succeeded, at least to some extent, through our efforts. Our student surveys showed that more than 90% of the students agreed that the Multilevel Socratic classes helped them develop critical-thinking capability. Why? In class discussion, we patiently listen to our group members' opinions, which sometimes are quite different from our own views. We try to understand them by questioning ourselves and standing on their positions. We are trying very hard to change our "one and only answer" mindset and explore the world in a critical way. We see now that the world is not formed by a bunch of simple questions to which we can easily find the "one and only answer." Instead, it's an enormous complexity that we may never completely understand.

We constantly analyze ourselves in the process of experiencing critical thinking. Maybe, the world we see with the "one and only answer" mentality is fundamentally different from the world that people see with the "critical thinking" mentality. When first adopting the "critical thinking" mentality, we are frustrated and even upset because it estranges us from the familiar and unsettles our settled assumptions. Once things began to change, they can never be the same again. In adapting to critical thinking, we gradually learned to appreciate the persuasive aspects of different opinions and distinctive perspectives by changing our thinking mode. After all, a world of plurality is not black or white but consists of different colors.

C. Guided Discovery vs. Passive Reception

In Chinese legal education, because of the underlying assumption that students know nothing about law until teachers tell them, the class proceeds in the form of a lecture. The law professor plays the leading role as the teacher, while the students sit in the classroom as the audience. Interaction between professors and students rarely happens. Because lectures don't involve students, students are not motivated to prepare before class. We acquire knowledge passively, without engaging it directly.

In the Multilevel Socratic classroom of questions, our experience is completely different. Here, the professor plays the role of guide and instructor, while the students somehow play the leading roles because we are supposed to deliver answers to each question. We acquire knowledge by discovering it directly, with the help of the teacher. This method inevitably leads to highly participatory classes which we hadn't experienced before. The professor raises deeper questions based on students' answers, furthering interaction even more. In Chinese law classes, we are quite used to receiving answers from teachers, but here, we are trained to get answers from each other.

We think that the question method offers many benefits. First, we have a deeper and more comprehensive understanding about materials that we prepare before the class. If we want to give proper answers to questions that the professor raises in the class, we have to think through the contents of that material first. But understanding those materials always changes and improves in class, sometimes because the answers to Professor's questions give us more enlightenment, and sometimes because Professor adds new explanations that fundamentally change our original ideas. We all have the feeling that we always generate better understanding of cases and doctrines after class discussion.

Additionally, we make lots of specific improvements in our skills after experiencing the participatory process of Multilevel Socratic teaching. We improve our ability to answer questions in a situation where we suddenly get called on. Some of us used to be so nervous that we can barely speak when that happens. However, after taking Professor Ryan's classes and being forced to answer frequently, these students can now express their ideas when they are unexpectedly asked. We gain more confidence, which comes from the sense of achievement when our answers engage the legal points that the questions are designed to reach. Also, we gain inclination to deliver our opinions during conversations with other people, not only in Professor Ryan's class, but also in other classes or even extracurricular activities.

To our surprise, we also found that the Multilevel Socratic Method, by keeping us thinking, even has the physical benefit of helping us stay energetic. Our American law classes both meet from 1:30–4:30 p.m., a period of time in which we usually take a nap.¹⁶⁹ When our Chinese law classes happen during that time, we always fall asleep, no matter how hard we try not to. However, in our Socratic class, we are always very clear-minded and very seldom feel sleepy. We think it is because the questions the professor asks help keep the student brain functioning and actively involved. Once we are drawn into the intellectual journey of the class, there is almost no chance for us to be sleepy. Lecture-based teaching in Chinese law classes provides no stress to engage students intellectually, so students always are much more likely to feel sleepy. This explains why many students fall asleep even in classes taught by some excellent Chinese law professors.

169. Ginger Huang, *Napping the Chinese Way*, WORLD OF CHINESE (May 6, 2012), <http://www.theworldofchinese.com/2012/05/napping-the-chinese-way/>.

D. The Value of Preparation Before Class

Due to the different teaching methods, the requirements of class preparation are also different between the United States and China. In contrast to our usual experience, the Multilevel Socratic Method requires sufficient preparation by both teacher and students. It is clear when the teacher has designed an interesting journey for us, and it is our job to be ready for that journey.

Socratic teaching anticipates that students will read the cases in advance. Before classes, we need to understand the basic facts, claims, and results. We try hard to understand the arguments on both sides and the rationales of court decisions so that we can give accurate answers to Professor's questions. Students prepare detailed case summaries and fill their missing knowledge from the reading sources, including the textbook's explanations of the doctrinal concepts in the cases. When students have not read the content, they cannot keep up with the pace of the teaching, and they learn little. When they have prepared well, they can verify knowledge obtained on their own during the class, and they can also bring forward new problems to be solved during class discussion. Because everyone is equally likely to be called on to answer questions, each of us is motivated to prepare well.

The student surveys we took showed that students prepared an average of four to eight hours for every three hours of class each week, while preparation for most Chinese law classes is almost zero hours. It took a long time to read in English, but we also made detailed notes of the facts, issues, arguments, and results. In order to meet the requirements of Socratic learning, students must improve their individual self-study abilities, a necessary practical skill for future practitioners in the demanding legal environment.

E. Focus on Reasoning Process vs. Results

In the Multilevel Socratic classroom, the professor does not necessarily care whether a student's own analysis is consistent with the judicial decision under investigation. The professor cares whether the student's legal reasoning in defense of that position is sound. Our conclusions are less important than the reasoning processes behind them and our ability to analyze and discuss our reasoning. This is new for us.

Professor Ryan even encouraged students to raise contrary opinions in the process of her teaching. When students argue their own point of view, Professor Ryan tries to capture what is valuable in their answer. Even if she does not agree, she affirms the best parts and guides the student more carefully through the rest. She encourages students to experiment with conclusions that differ from the judge's,

from other students', and from her own. She focused less on our result, and more on the process we used to get that result. This helped us improve our reasoning process, and over time, it also improved our results.

F. Evaluation: Reasoning vs. Memorization

In Chinese legal education, law professors usually give a closed-book exam to provide students more incentive to memorize important material.¹⁷⁰ This is especially true for undergraduates because Chinese law professors expect students to memorize a lot of legal rules and doctrines in the early years of studying law. Under the usual exam format, students stay in one classroom and answer questions within the required time, usually 100 minutes. The Chinese exam lays emphasis on students' memorization of standard statements and explanations of certain theories and rules. It doesn't really examine critical-thinking ability, even though there may be questions asking us to analyze a case. This is because most of these questions are devised for students to apply the correct standard theory or doctrine by memory, without much creativity or true analysis. As a result, almost every Chinese law student knows the popular saying: "*Two weeks is a whole semester.*" It means that students can pass almost every law exam by making full use of the last two weeks before the exam to do heavy memorization—even if they are absent from classes from beginning to end.

The open-book exams we experienced in Professor Ryan's class required us to provide arguments to open-ended questions and to cite examples within the scope of class content. To perform well in this kind of exam, we have to think critically about the question, apply the rules and doctrines we learned to new facts, and figure out which class examples provide precedent. It requires us to pay lots of attention to what we learned in class. It is impossible for us to perform satisfactorily on the exam if we miss class frequently or do no reading until the end. Two weeks were not a semester in these classes.

Some of us wonder whether, under open-book exams, students can develop a more solid knowledge basis compared with the evaluation system in Chinese legal education.¹⁷¹ Knowledge that we learn through heavy memorization without analyzing thoroughly is likely to be forgotten. But rules that we thoroughly understand may stay in mind for a very long time. Some of us can recall many more doctrines that we learned through thinking in our American law classes, com-

170. Of note, closed-book examinations are also common in American law schools and undergraduate classes.

171. Cf. Paul Maharg, *The Culture of Mnemosyne: Open-Book Assessment and the Theory and Practice of Legal Education*, 6 INT'L J. LEGAL PROF. 219, 219-39 (1999) (discussing the benefits of open-book exams).

pared to only an obscure impression of what we memorized for Chinese law exams. Sometimes we recall what it was we worked so hard to memorize in the Chinese class, but we do not remember what to do with it.

G. The Importance of Law Teachers' Exposure to Practical Legal Experience

Finally, because this method emphasizes the practical application of theory, we wonder whether our learning is enhanced when the instructors have some prior practical experience as a lawyer, government official, or judicial assistant—rather than solely as an academic theorist. As Oliver Wendell Holmes explained, law is a highly practical discipline: “The life of the law has not been logic; it has been experience.”¹⁷² Without practice and experience, law teaching risks feeling like empty talk to students.

One student observed, “The individual practice experiences of foreign law professors I have had contact with are very rich—a lot were lawyers, judges, government employees, or non-governmental organization staff before teaching in the law school. These experiences enable them to understand the society, the government and the judiciary more deeply and broadly.” Many law teachers in Chinese universities become a teacher directly after graduating from the university. They have no legal, judicial, or other practical experience and, thus, no real understanding the operation of law.¹⁷³ They can only explain the intellectual content of what we study, and they end up teaching students “dead” knowledge. In fact, Chinese legal education trains future law teachers in a separate track from future lawyers.¹⁷⁴ It is expected that the best students will go directly from graduate study into teaching positions, like a professor of history or literature.

Yet there are good reasons to treat legal training differently. Lawyers, government policymakers, and judges make decisions that directly impact people's lives through legislation and litigation. The consequences of their training are felt by others in society in important ways. In this way, they are more like doctors than historians (even though law has closer ties to history than medicine). You would not want to be trained as a surgeon by someone who had never held a knife (nor would you want to be operated on by someone trained this way). Just as our academic leaders at the Asian Law School Deans Association have recommended, it is important to build more bridges between theory and practice in Chinese legal education. Encouraging

172. OLIVER WENDELL HOLMES JR., *THE COMMON LAW* 3 (The John Harvard Library 1891).

173. PRESIDENT & FELLOWS OF HARVARD COLL., *supra* note 167.

174. *See supra* text preceding note 116.

law teachers to have practical experience early in their careers might help further this goal.

V. REPORTS FROM THE FIELD ON ADAPTING THE METHOD IN CHINESE-LED CLASSES

In this section, student authors Xin Shuai and You Ran describe their experiences adapting the Multilevel Socratic Method for use in their own law teaching after experiencing it as students in Professor Ryan's classes. Both are doctoral candidates at Ocean University of China. Xin Shuai teaches undergraduate classes in foreign law to prepare non-law majors for study abroad. His experience addresses the potential for Multilevel Socratic teaching to inculcate creative- and critical-thinking skills in university education generally. You Ran teaches Chinese law to Chinese undergraduate law majors. Her experience addresses the benefits and challenges of Multilevel Socratic teaching in Chinese legal education specifically.

A. Xin Shuai's Law Classes for Non-Law Majors

Beginning in 2010, I have been a part-time law teacher in the School of International Education, Ocean University of China, while simultaneously pursuing my doctoral degree in law. I teach as part of the project entitled Chinese Service Center for Scholarly Exchange—Scottish Qualifications Authority Higher National Diploma (SQA HND).¹⁷⁵ The students in this program will have the chance to get SQA HND Certificate and study abroad for one year or more after three years of study in China.

The courses I teach are Business Law: An Introduction¹⁷⁶ and Legal Aspects of Commercial Transactions.¹⁷⁷ The introductory Business Law class has about sixty students, and Commercial Transactions has about fifteen. The teaching materials that I use are original editions of British textbooks written in English. For my students, the classes I teach are not their core classes because their majors are business-related. The textbooks include many cases, but the students are not being trained to be a lawyer or judge. Both courses aim to teach the students basic knowledge of business law.

In my teaching from September 2010 to June 2011, I taught the law courses in a traditional way which I learned from my Chinese law teachers. Then I joined Professor Ryan's Socratic classes. I had heard

175. *HND Program in China*, CROSS CULTURE EXCHANGE, <http://www.cceusa.org/c3.htm> (last visited July 6, 2013).

176. SCOTTISH QUALIFICATIONS AUTH., *BUSINESS LAW: AN INTRODUCTION* (China Modern Econ. Publ'g House 3d ed. 2010).

177. SCOTTISH QUALIFICATIONS AUTH., *LEGAL ASPECTS OF COMMERCIAL TRANSACTIONS* (China Modern Econ. Publ'g House 1st ed. 2007).

of the Socratic method before, but I had not experienced it. I found it is a good method to teach law, so I decided to try to carry out this method in my own law teaching. My teaching experiment proved to be a great challenge but also gave me promising results. The following describes my experience implementing our modified Socratic method in my classes.

1. Asking Questions Instead of Offering the Correct Answer

My aim in implementing the Multilevel Socratic Method in my classes was to enhance students' critical thinking ability and their curiosity and interests in law. This aim is considerably different from the ones commonly used in higher education at law schools and universities in China. Asking questions is an important part of the Socratic teaching method, and Chinese teachers also ask students questions. But most of these questions are quite different from the questions in the Socratic method. Most questions asked by Chinese teachers are designed to test whether students have remembered the right answers,¹⁷⁸ while Socratic questions are designed to enhance students' ability to think critically and creatively.

In the traditional Chinese way of teaching, I give the right answers to students and then ask questions to test their memory. While using the Socratic method, I lead the student to cooperate with me to get the answers that will satisfy our reasoning process. I gradually learned to change the proportion of lecturing and asking critical questions. I also learned to ask different kinds of questions.

In order to ask good questions, I have to change my work in preparation for classes. By my traditional teaching method, the main work for me to do before classes is to be familiar with the knowledge of next class and decide a list of points that I will teach the students. It is quite easy for me to propose questions to get a "right answer" (*What is a valid offer? When is a contract legally binding?*). However, it takes more time and effort to prepare questions that will spur students to think critically and creatively. This is a challenge for me. I changed the proportion of my preparation and gave more time to questions and discussion. But the problem of preparing questions cannot be resolved only by allocating more time. What kinds of questions to ask is also a big problem.

Remembering Socrates' original approach,¹⁷⁹ I privately named my method for designing questions "From Opinion to Knowledge." My students are majoring in business, so it is the first time for all of them

178. For example, a contracts professor might ask: "What are the elements of a valid contract?" "What is the definition of an 'offer?'" These questions are designed to test our memory.

179. See *supra* notes 91–92 and accompanying text.

to learn the subject of law. Accurate knowledge of the law is far from them. However, as a phenomenon of experience, law is everywhere in their daily lives. Each one comes to my classes with some understanding of law. Although they do not have an accurate knowledge of law, they do have individual ideas about law. In traditional Chinese law teaching, I will tell them the right answers to correct their knowledge without hearing their ideas too much because those ideas are only laymen opinions. But I observed that Professor Ryan did not deny those laymen opinions from us, and instead she used them as a starting point to teach. This kept class interesting to us and spurred us to think.

I decided to use this method as a teacher, modeling after the Multilevel technique. First, we brainstorm to collect students' raw opinions about certain law phenomenon. Then we explore those ideas to compare, debate, and refine them. For example, when I teach the introduction of contract law, I do not give them the definition of contract directly. Instead, I ask them "*What do you think is a contract?*" or "*What kind of elements do you need to create a contract?*" I clarify my standpoint that I do not expect professional or correct response from them. I will not punish their naïve ideas about law. I ask them to recall their daily thoughts and experience with contracts and encourage them to share their opinions. Chinese students are inclined to be too shy with their opinions in classes. Even though I encourage them a lot in the beginning, the number of volunteers is small. Other students want to observe, so I call students by name to invite them to bring out their opinions. As they share their raw opinions, I write down the core part of their idea on the blackboard.

Although their opinions are not usually accurate statements of law, they propose lots of useful ideas that point us toward knowledge. I tell them that what they said is not that far from knowledge, that their comments are helpful. Following this, I concentrate on specific points of a contract, using more questions about the details to lead them as they carve new understanding from their raw opinions. For instance, to test who can be a party to a binding contract, I ask them: "*Can a twelve-year-old boy buy this expensive house? How about someone who is insane? How about a person who is intoxicated by alcohol or drugs?*" Using these kinds of questions, I help them understand the width and content of a legal issue and lead them to the basic legal concept.

2. *Encouraging the Students to Defend Themselves*

No matter how accurate their answers are, I need them to defend these answers by showing their reasons. I encourage them to imagine themselves as legislators, judges, and litigators under different situations. I am not satisfied by simple answers. When I find the weak-

ness in their reasoning, I continue to challenge them, to lead them to fill the gaps in their own reasoning. I encourage them to defend their opinions. By defending their opinions, they will learn to analyze legal problems and advance their proposed solution.

In the beginning, few students wanted to volunteer their opinions and reasoning. Being obedient to teachers and accepting their knowledge is very typical of Chinese students; they are not trained to defend their opinions under the pressure of teachers' questions. They do not have the inclination to challenge teachers about knowledge. Teachers don't usually ask so many questions, so it has been easy for students to escape giving their own ideas. So their reaction was not very quick in the beginning. They were embarrassed and nervous when I called on them.

In consideration of this, I encouraged them by confirming the good points in their reasoning whenever I could. When there were no volunteers, I used the name list to call on students to propose their ideas. Nobody knows when they will be called on, so everyone must privately attempt some reasoning in case they are next.

3. *Results*

Step by step, their reactions have become quicker, and the number of students who avoid participation by saying "I do not know" is diminishing. Students are more interested and active in class. They even have to wait for chances to speak because the number of students who want to speak may be too many. The attendance rate is better than before. In the previous semester, the attendance rate of my Commercial Transactions class was often fifty percent, but in the course where I introduced the method, more than two-thirds attend class every time.¹⁸⁰

Troublingly, I notice that male students are more active in Socratic dialogue than female students, even though when I call on female students, their answers can be as good or better than male students.¹⁸¹ Their ability to organize their opinions is often better. They say more than just the answer, sharing more reasons for their answers. In light of this fact, I try to balance the time I give to volunteer and silent candidates, which helps balance their voices in class.

B. You Ran's Experience Teaching Law Majors

I have been a lecturer at the Law Department of the College of Arts in China University of Petroleum (Northeast) for the last five years.

180. However, the improved attendance rate may also reflect comparatively stronger students in the second class.

181. Disparate participation by gender appears to be a pancultural problem in Socratic teaching. See *supra* notes 38–40 and accompanying text.

During the period of studying for my doctorate, I participated in several of Professor Ryan's courses and the differences in educational culture between East and West left me with a deep impression. I introduced the Multilevel Socratic Method developed in our case study into my environmental and natural resources law course, and these are the conclusions I draw based on my own experiment in teaching reform.

1. *Lesson Preparation Is Both the Teacher's and Students' Responsibility*

The Socratic method requires that not only teachers but also students make full preparations before lessons, so that students can solve the questions posed by the professor. This is a difficult transition for Chinese students, who do not usually read before class. Although I hardly ever did before, I always give some pre-class reading assignments to my students now. These reading materials refer to the basic theories and cases I will present in class. Because traditional Chinese law textbooks focus on theories only, I had to add a supplementary book with cases for us to discuss.¹⁸² Although this means an increase in my workload and theirs, my students praise the addition for its efficiency and the deeper legal learning they get from the readings.

2. *The Advantages and Disadvantages of Small Group Discussions*

A primary feature of the Multilevel Socratic Method is the use of small peer-learning groups. At the request of my students, I divided the class into nine groups according to their dormitories. Grouping them according to where they live makes it convenient for them to launch more discussion after class. Immediately, there are some clear advantages. According to the feedback from students and what I have observed as the teacher, I find that integrating group discussion eases the nervous tension caused by purely individual Socratic dialogue. It is easier to answer the teacher's question directly, and the answers are usually fuller, owing to the extensive small group discussion before a student is put on the spot alone.

There are also some disadvantages. In my class, the representative who answers the teacher's question on behalf of the group will usually express their own points of view with a focus on the mainstream view, neglecting potentially valuable nonmainstream contributions. My solution for this is to remind the speaker of his or her responsibility to present the full scope of the group discussions, including nonmainstream viewpoints.

182. SHOUQIU CAI (蔡收秋), *COLLECTION OF CASES FOR ENVIRONMENT LAW* (Fu Dan Univ. Press, 2009).

Related to this is the unexpected problem of local orthodoxies. Mainstream views can be formed in the small groups, which may then deny someone's minority viewpoint. When one or a few students hold different opinions from others in the group, those students often lose confidence, too quickly come to agree with the mainstream view, and fall into self-denial without debate or discussion. This creates a dangerously weak link in the Socratic chain of exploring different ideas. For example, I once led the students to discuss whether and how China should regulate its fast-growing nuclear energy industry. At first, some students believed China should do more to regulate nuclear energy. However, stronger voices questioned whether regulatory laws would harmfully interfere with the development of nuclear energy by inciting public resistance toward the construction of nuclear power plants. In the face of strong resistance, those initially favoring regulation quickly changed their minds instead of benefiting class discussion with a different viewpoint.

Another problem I found with the groups is that some students are reluctant to participate even in small group discussions. Many students play an important role in those discussions and actively participate in sharing findings with the full class, but others are unwilling in both discussion and presentation. Though it is hard to fully solve this problem, I believe that as Socratic teaching becomes more common in China, students will become more familiar with it, and a growing number will choose to become actively involved at all levels.

3. *The Challenges and Rewards of Implementing Socratic Teaching*

In using the Socratic method, teachers have a responsibility to lead. Though teachers and students explore questions and doubtful points in the law together, the teachers must play the needed role in coaxing discussion toward key points. At the same time, they should point out faulty legal reasoning and doctrinal misunderstandings to guide students toward deeper thought and research on legal issues. Balancing the two can be difficult.

I adopted two different approaches to managing this problem. In some group discussions, I ask the students to give separate answers about different aspects of a single question. In others, I ask half the group to take one perspective and half to take the other, and then they debate the given question point for point. My students commonly say that in these discussions or debates, when the conclusion is unclear, they discover more and more ways of looking at the problem, leading them to deeper understanding and leaving them with motivation to do further research and analysis.

All this means a heavier burden for my preparations, as it requires me to prepare myself with comprehensive knowledge and lesson plans

regarding every case we cover. But it is also a process of mutual benefit between lecturer and students because blanks in my own knowledge will also be filled in. Thanks to our Multilevel Socratic Method, class is no longer a place where I can hear only my own voice; it is now where students have more chances to express their own viewpoints, as well.

4. *Designing Proper Questions for Socratic Dialogue*

Good questions are key to Socratic teaching but largely foreign to Chinese teachers. In China, traditional legal education focuses on the accuracy of the results of legal analysis and ignores the rationality of the underlying legal reasoning.¹⁸³ Socratic teaching emphasizes that the methods of analysis can be as important as the conclusion itself. We should pay more attention to the quality of students' legal reasoning than whether their answers are consistent with the court's own conclusions. We should encourage students to question every possible answer, arousing students to do more thinking and to fully engage the material. But engaging students requires that the teacher present effective questions.

In my class, I want to give students the opportunity to explore and express their viewpoints, but I am still trying to learn how to design good questions for use in Socratic dialogue. It is still very new to me, but I have set three goals for designing good questions. First of all, the questions must elicit the key and difficult points of the teaching task, and they should provide a springboard for discussing the content at hand. Next, the questions must test understanding and not memory, inviting students to probe and process competing considerations. Finally, questions should require students to apply the acquired knowledge to different problems and circumstances. This way, teaching appropriately combines theory with practice and enhances students' abilities to analyze and solve practical legal issues. Chinese law teachers' abilities to design these kinds of questions will improve gradually along with our growing experience in applying the Multilevel Socratic Method.

5. *Students' Proposals to Integrate Socratic Teaching and Exam Preparation*

My experience with Socratic teaching is different from Xin Shuai's because he is teaching business students peripherally interested in law, while I am teaching law majors who will need to pass a licensing exam. The introduction of cases and Socratic teaching has created lots of anxiety in my students, which makes it difficult to establish a fully integrated Socratic classroom. The only advantage of the traditional

183. See Kee-Kuok Wong, *supra* note 74, at 156.

Chinese approach to legal education is that it facilitates the memorization of huge volumes of knowledge. Students worry that my application of Socratic teaching methods will damage their ability to acquire the knowledge they need to help them pass the judicial examination.

Therefore, my students made two sensible proposals to me concerning cases selected. The first is that I select cases connected with the content of the judicial examination that will help them pass the exam. The second is that I select cases in continuity, meaning that the key points of previous cases should be included in subsequent cases, to help them establish a complete and interrelated system of knowledge. I believe these proposals are compatible with the Multilevel Socratic Method. Adopting them will make it even easier for Chinese students to embrace Socratic learning more willingly, which will motivate them to study and participate in education reform more actively.

In addition, Chinese law majors study hard and pay a lot of attention to their final grades. Teachers can harness this mechanism of reward and punishment by setting up a link between participation in Socratic classes and the academic records that others will evaluate. Grades should be given according to the quantity and quality of class participation as well as final exams so that students will be encouraged to actively take part in Socratic dialogue and class discussion. I have chosen to assign thirty percent of a student's final grade based on class participation.

How to fairly evaluate student performance is a relatively subjective question. Unreasonable evaluation systems will affect students' learning and presentation. Therefore, as teachers, we should formulate a stable, fair, and effective grading mechanism for encouraging successful Socratic discussion. For example, if students are willing to answer questions, they may get credit. If the answers show certain depth, teachers can add even more credit. Objective and comprehensive assessment should be given to the largest extent possible.

VI. RECOMMENDATIONS FOR THE FUTURE

Our paper concludes with preliminary recommendations for future use of Multilevel Socratic Method in both Eastern and Western contexts, based on our experiences in the primary Chinese case study and our separate experiences implementing the method in later American and Chinese courses.

A. In the East

Adapting Socratic teaching for use in Eastern cultures with Confucian roots appears to be a promising way to inculcate underdevel-

oped critical- and creative-thinking skills through higher education. Although our study does not address it directly, we further presume that the method is also suitable for use in earlier schooling (indeed, teaching secondary school students these skills would ease the hurdles of introducing them later at the university level). However, because most secondary students have not previously been asked to participate in their own learning this way, adapting the Socratic method for university teaching poses several important challenges in the East.

Based on our experience in China, the most initially difficult aspect of implementing Socratic teaching in Eastern cultures is likely to be convincing shy students to participate actively in class discussions and, secondarily, to prepare adequately beforehand. Fortunately, these are also the most easily redressed concerns, remedied with time, practice, and the development of new study habits. Still, users of the Multilevel Socratic Method in any culture should pay careful attention to gender and other subcultural differences that may impact individual students' comfort and contributions to class.

Newly Socratic teachers (in both East and West) are also likely to struggle initially in developing the kinds of questions that work well in a Socratic environment. We suggest that teachers experiment with open-ended questions that probe sensitive points of a given problem: *"What is the right choice? Why is this the best choice? Are there other possibilities?"* The best questions for discussion will not test students' memory but will elicit answers that can become the subject of further discussion. Early exploratory questions should be followed by others that invite students to apply the understanding they discover in new circumstances, preparing them for practical problem solving and real-world analysis.

Our experience also suggests that peer-learning groups may be especially vulnerable to local orthodoxies, in which students prematurely anoint a mainstream view at the expense of equally valid minority views. Moreover, Chinese law teachers implementing Socratic teaching face practical hurdles when students' careers hinge on a professional exam designed to reward memorization-based learning rather than creative or critical thinking. As similar professional exams dominate the experience of other Asian law students (including Japanese, Korean, and Vietnamese students), we expect this problem to transcend the Chinese experience.

To effectively cope with these challenges, we recommend that teachers introducing the Multilevel Socratic Method explain as transparently as possible what the method is designed to accomplish, how it works, and what the students' responsibilities are in this new kind of classroom experience. Teachers should help the students build new study habits in and out of class through clear expectation-setting and

possibly through role modeling by prior successful students (who, for example, could help lead peer discussion groups on the first day of class). To encourage students to meet their responsibilities in the Socratic classroom, teachers may need to create positive and negative consequences through the course evaluation structure, including grading class participation as well as written papers and examinations.

In the near term, teachers may also need to realistically balance Socratic teaching with more traditional forms of instruction to help their students simultaneously develop the skills required by their professional exam and the skills needed to perform adequately in their future careers. It is our great hope that educators will use whatever means of influence are available to help transition these daunting exams away from rewarding only “duck-feeding” learning and toward a model that also rewards the creative and critical thinking so needed in professional contexts. It is perverse to force students to expend their university learning resources preparing for an exam that enables entry to a career for which that very style of education cannot prepare them adequately.

B. In the West

The integration of Multilevel, peer-Socratic instruction into traditional Socratic classrooms also offers substantial benefits to American law students and other Westerners with similar cultural foundations. Traditional Socratic dialogue between a professor and individual students in series remains an efficient and exciting means of conducting a group discussion in discrete iterations, especially in comparison to purely passive reception-oriented lecturing. However, the integration of peer-learning groups adds substantial value in fostering multiple learning conversations at once, complete with opportunities to compare results and expand analyses across a classroom of fully participating individual students. More often than not, more ideas are generated, more alternatives are debated, more voices are included, and more sophisticated reasoning results than from the traditional method alone.

Improving on the existing model, Multilevel Socratic teaching engages a larger number of students in more directly kinetic learning than individually focused dialogue, which relies more heavily on purely auditory and self-reflective learning among the majority of students in each class. In group Socratic inquiry, students are able to refine their ideas in discussion with peers before performing legal analysis in front of the professor and full class. Peer groups improve the quality of student participation by adding a local springboard for brainstorm and critique. They encourage reflection by all members of the group, while only a few chosen participants are given the same opportunity during individual Socratic dialogue.

Socratic peer learning also provides an important laboratory for the development of group competency skills, including teamwork, collaborative problem-solving, and deliberative creative endeavor. Nearly all students' future careers depend at some points on their ability to work effectively in groups, and much American higher education—especially legal education—is woefully devoid of opportunities to practice. There is clear value in incorporating collaborative work models into traditional American legal education.

Yet the peer-learning groups are only one feature of a successful Multilevel Socratic classroom. The Multilevel instructor effectively integrates Socratic dialogue among the nested levels within groups, between groups, and in individual dialogue. Ideally, rotating among these different levels of exchange deepens the overall inquiry and inculcates students' critical- and creative-thinking skills in both individual and collaborative environments. Finally, in maintaining ongoing student engagement at multiple levels, the Multilevel Socratic Method demands more from students and imposes greater accountability in the additional peer groups. Ideally, this kind of learning environment will encourage Westerners to struggle more fully with difficult material, emulating Eastern education traditions that inculcate discipline and hard work.

C. Overall

Traditional, individual Socratic dialogue provides a superior medium for teaching independent critical thought under conditions of stress and for maximizing the opportunities for a large number of students to experience the complex, guided, intellectual journey that only a trained instructor can provide. Integrating peer-learning groups into traditional Socratic teaching provides an effective means of expanding the teaching of critical- and creative-thinking skills in different social, professional, and intellectual contexts. It increases the number of voices and perspectives shared in class discussion, and it can improve the learning experience of students potentially at risk for marginalization by race, gender, or ideology.

For these reasons, our overall recommendation for teachers in all cultures is to seek out opportunities to maximize different forms of participatory learning in the classroom. An ideal Multilevel Socratic classroom mixes peer instruction with individually targeted dialogue, together with other teaching innovations, including role plays, debates, simulations, field trips, flipped classroom, and other creative forms of engagement. At the end of the day, students who learn through a variety of methods learn to perform in a variety of circumstances, using a diversified intellectual toolbox. This should be the goal of all educators.